

(25,468)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 638.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
PLAINTIFF IN ERROR,

vs.

GEORGE E. WARD.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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No. 2617

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

INTER-ISLAND STEAM NAVIGATION COMPANY,
LIMITED, an Hawaiian Corporation,
Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

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*United States Circuit Court of Appeals for the Ninth
Circuit.*

INTER-ISLAND STEAM NAVIGATION CO.,
LTD., an Hawaiian Corporation,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

**Notice of Filing of Transcript of Record on Writ of
Error and Designation of Parts of Record to be
Printed.**

To George E. Ward and Messrs. E. A. Douthitt and
John T. De Bolt, Attorneys for Said George E.
Ward:

Please take notice that the transcript of the record
in the above-entitled cause was transmitted to the
Clerk of said Court for filing, on June 17th, 1915.

You are further notified that the Plaintiff in Error
considers all of the record necessary for the consid-
eration of its assignments of error with the exception
of the following, which Plaintiff in Error does not
consider necessary to be printed in said record and
desires to have omitted from said record as printed:

1. Omit pages 1 to 4, inclusive: Petition for Writ
of Error to the Circuit Court of the First
Judicial Circuit of the Territory of Hawaii;
2. Omit pages 5 to 19, inclusive: Assignments of
Error;
3. Omit page 20: Notice of Issuance of Writ of
Error;

4. Omit page 21: Summons and Return of Service;
5. Omit pages 22 to 25, inclusive: Bond on Writ of Error;
6. Omit pages 26 to 28, inclusive: Writ of Error;
7. Omit page 39: Plaintiff's Demand for Trial by Jury;
8. Omit page 290: Testimony of Malcolm Macintyre;
9. Omit pages 240-250, inclusive: Testimony of Dr. James A. Morgan;
10. Omit pages 295-351, inclusive: Testimony of Dr. George F. Straub;
11. Omit pages 565-618, inclusive: Testimony of Dr. Clifford B. Wood;
12. Omit pages 618-651, inclusive: Testimony of Dr. James Robert Judd;
13. Omit pages 678-682, inclusive: Testimony of Dr. George H. Stover;
14. Omit pages 761-762, inclusive: Testimony of M. M. Graham;
15. Omit page 830: Appearance of J. T. DeBolt, as Attorney for George E. Ward;
16. Omit all original exhibits sent up to Circuit Court of Appeals, said exhibits being:
 - (a) Plaintiff's Exhibit "A," being model of coal conveyor;
 - (b) Defendant's Exhibit 1, being blue-print of conveyor;
 - (c) Defendant's Exhibit 5, being a pulley worn by cable;

- (d) Defendant's Exhibit 7, being a dolly worn by cable. Said exhibits are designated out of the printed record for the reason that in accordance with Rule 14, Subdivision 4, of the Circuit Court of Appeals said exhibits are not required to be printed.

17. Omit all endorsements on the various pleadings except the word "filed" and the date of filing.

Dated, Honolulu, June 19, 1915.

L. J. WARREN,

E. W. SUTTON,

Attorneys for Plaintiff in Error.

I hereby certify that a duplicate of the above Notice and Designation was served upon J. T. DeBolt, Esquire, one of the Attorneys for George E. Ward, the Defendant in Error, on June 19th, 1915.

Dated, Honolulu, June 19th, 1915.

E. W. SUTTON,

Of Counsel for Plaintiff in Error.

Receipt of a copy of the within Notice and Designation is hereby admitted this 19th day of June, 1915.

JOHN T. DE BOLT,

Of Counsel for Defendant in Error.

[Endorsed]: No. 2617. United States Circuit Court of Appeals for the 9th Circuit. Inter-Island Steam Navigation Co., Ltd., an Hawaiian Corporation, Defendant, Plaintiff in Error, vs. George E. Ward, Plaintiff-Defendant in Error. Notice of Filing Transcript of Record on Writ of Error and

Designation of Parts of Record to be Printed. Filed
Jul. 2, 1915. F. D. Monckton, Clerk.

In the Supreme Court of the Territory of Hawaii.
October, 1914, Term.

GEORGE E. WARD,

Plaintiff and Defendant in Error,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Hawaiian Corporation,
Defendant and Plaintiff in Error.

Appearance and Answer to Writ of Error, etc.

Now comes George E. Ward, the plaintiff and defendant in error herein, by Messrs. Douthitt & Coke, his attorneys, and hereby appears in the above-entitled court, pursuant to the writ of error heretofore issued herein, and for answer to said petition for a writ of error, assignments of error, and writ of error, says: That there is not any error in the record and proceedings aforesaid, nor in the rendition of judgment by the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, nor in the verdict of the jury in said cause, nor in any other matter, proceeding, or ruling herein.

WHEREFORE, he prays that the said Judgment

may be affirmed and that his costs may be adjudged to him.

GEORGE E. WARD,
Plaintiff and Defendant in Error,
By (Signed) DOUTHITT & COKE,
His Attorneys.

Dated: Honolulu, December 21, 1914. [29*]

Due service of within appearance and Answer to Writ of Error, etc., and receipt of copy thereof admitted this 21st day of December, 1914.

SMITH, WARREN, HEMENWAY & SUTTON,

E. W. S.

Attorneys for Defendant and Plaintiff in Error.
[30]

Filed December 21, 1914, at 3:55 P. M.

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

(Stamps \$2.00.)

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant.

*Page-number appearing at foot of page of Original Transcript of Record.

Complaint.**DAMAGES.**

To the Honorable, the Presiding Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii:

Now comes the above-named plaintiff, George E. Ward, and complaining of the above-named defendant, Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, and for cause of action alleges, avers and shows as follows:—

First. That plaintiff is a citizen of the United States, a resident and citizen of the Territory of Hawaii, and is now forty years of age. That at the time of the accident and injuries hereinafter complained of and for a long time prior thereto, he followed the vocation of MACHINIST AND ENGINEER, and as such machinist and engineer aforesaid earned as wages the sum of Six (\$6.00) Dollars per day, and overtime, or an average of about One Hundred and Fifty (\$150.00) Dollars per month. Plaintiff avers in this behalf that he knows no other business or vocation except that of machinist and engineer aforesaid, and was and is dependent solely and exclusively on his earnings and wages as such for his support. Plaintiff [31] further avers that prior to the accident and injuries hereinafter complained of, he was a strong, robust and healthy man in the full use and enjoyment of his limbs.

Second. That at all the times herein mentioned the above-named defendant was and still is a cor-

poration organized and existing under and by virtue of the laws of the Territory of Hawaii, and transacts business and has its principal office in Honolulu, City and County of Honolulu, Territory of Hawaii.

Third. That on the 8th day of July, A. D. 1912, at Honolulu, aforesaid, and for a long time prior thereto, the said defendant, as a part of its said business, maintained, carried on, conducted, operated, and ran a certain cable railway or coal-conveyor, for the purpose of conveying, carrying and transporting coal on cars for such purpose provided by said defendant, from the place where such cars were loaded to the point and place where such coal was by said defendant required to be dumped and unloaded. That said cars so loaded with coal aforesaid were, by said defendant run and operated on steel rails upon a circular track, and were drawn and propelled along and over the same by means of a steel cable to which said cars were attached. That said steel cable was held in position on the curves of said track by certain pulleys or rollers around which the said cable was passed and drawn. That said railway and its cable and appliances were, on the date of the accident and injuries hereinafter complained of, built on a wooden superstructure elevated above the ground at a height of between twenty and thirty feet, and was on said date under the exclusive management and control [32] of said defendant.

Fourth. That on said 8th day of July, A. D. 1912, and for some time prior thereto,

plaintiff herein was employed by said defendant as
foreman
the ~~general superintendent~~* of said coal-conveyor.

Fifth. That the said steel cable so used and operated by said defendant as aforesaid, was on said date, and for a long time prior thereto had been in a dangerous, unsafe and worn-out condition, and unfit for the use and purpose required of it. That by reason of its unsafe, dangerous and worn-out condition, the said steel cable had, on said 8th day of July, A. D. 1912, and prior thereto, a tendency to slip and become detached from the said pulleys holding the same in position, all of which was then and there well known to said defendant and its agents. That by reason of said unsafe, dangerous and worn-out condition of said cable, and by reason of the negligence and carelessness of the said defendant, its agents, servants and employees in allowing and permitting the same to remain, continue and be in use and operation, the said cable on said 8th day of July, A. D. 1912, became detached and slipped from the pulleys holding the same in position. That while plaintiff herein was endeavoring and attempting to restore said cable to its proper position around the said pulleys, and without any fault or negligence on his part, the said cable notwithstanding the efforts of plaintiff herein, together with the other employees, to keep and maintain the same in position, suddenly, and with great force and violence, flew

[*Amended by order of Court May 5/13.—(S.)
Job Batchelor, Clerk.]

and become entirely detached from the said pulleys and struck plaintiff herein upon his body and hurled and precipitated him with great [33] force and violence to the ground below.

Sixth. Plaintiff further alleges that said defendant, although well knowing the tendency of said cable to slip and become detached from said pulleys by reason and on account of its dangerous, unfit and worn-out condition, and in disregard of the lives, limbs and safety of those employed about and near said cable, carelessly, negligently and knowingly failed and neglected to provide a suitable or any platform or guard-rail around said tracks so that reasonable protection might be afforded those obliged to work around and near said cable in the event of said cable slipping from said pulleys or rollers.

Seventh. Plaintiff further alleges that by reason of the unsafe, unfit, dangerous and worn-out condition of said cable, so supplied and furnished by said defendant as aforesaid, and by reason of the negligence and carelessness of said defendant in failing to provide a suitable or any platform or guard-rail as hereinabove alleged he suffered and still suffers the injuries hereinafter set forth.

Eighth. That as a result of the negligence and carelessness of the said defendant, its agents, servants and employees, as hereinabove alleged and set forth, plaintiff herein suffered a fracture at the base of his skull, a concussion of the right kidney, a fracture of the pelvis, a concussion of the brain, and distortion of the spine, and was greatly bruised,

wounded and contused. That by reason of said injuries he was confined in the hospital for over two months. Plaintiff further avers in this behalf that by reason of the injuries sustained by him as aforesaid he was and still is greatly shaken up, disturbed [34] and disordered in his nervous system, and as a result of said injuries he has been, and still is, greatly sick, sore, lame, disabled and crippled; and has suffered and still suffers great agony and pain. That ever since said injuries he has been and still is obliged to receive medical assistance, care and attention.

Ninth. That by reason of the injuries so sustained by him as aforesaid, plaintiff is now and will be prevented from carrying on his usual vocation of machinist and engineer, for the reason that he is now and will be permanently crippled and injured.

Tenth. That by reason of the matters and things hereinabove alleged, and by reason of the negligence and carelessness of said defendant, its agents, servants and employees, as hereinabove alleged, plaintiff has suffered damages herein in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00).

WHEREFORE, PLAINTIFF PRAYS: (a) That process may issue herein citing said defendant to appear and answer this complaint as by law provided; (b) That he may have judgment against said defendant for the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) as and for damages sustained by him by and through the negligence of said defendant as aforesaid; together with costs of court.

Dated at Honolulu, City and County of Honolulu,

Territory of Hawaii, this 10th day of March, A. D. 1913.

(Signed) GEORGE E. WARD,
Plaintiff.

(Signed) DOUTHITT & COKE,
Attorneys for Plaintiff. [35]

City and County of Honolulu,
Territory of Hawaii,—ss.

George E. Ward, being first duly sworn, deposes and says: That he is the plaintiff named and designated in the foregoing complaint; that he has read the same, knows the contents thereof, and the same is true of his own knowledge.

(Signed) GEORGE E. WARD.

Subscribed and sworn to before me this 10th day of March, A. D. 1913.

[Notarial Seal] (Signed) P. SILVA,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Filed Mar. 10, 1913, at 1:10 o'clock P. M. [36]

*In the Circuit Court of the First Circuit, Territory
of Hawaii.*

A. D. 1913, Term.

(Stamp \$2.00).

GEORGE E. WARD,
Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, An Hawaiian Corpora-
tion,

Defendant.

Term Summons.

The Territory of Hawaii:

To the High Sheriff of the Territory of Hawaii, or his Deputy; the Sheriff of the City and County of Honolulu, or his Deputy:

You are commanded to summon Inter-Island Steam Navigation Company, Limited, defendant, in case it shall file written answer within twenty days after service hereof to be and appear before the said Circuit Court at the term thereof pending immediately after the expiration of twenty days after service hereof; provided, however, if no term be pending at such time, then to be and appear before the said Circuit Court at the next succeeding term thereof, to wit, the A. D. 1914, Term thereof, to be holden at Honolulu, City and County of Honolulu, on Monday, the 12 day of January next, at 10 o'clock A. M., to show cause why the claim of George E. Ward, plaintiff, should not be awarded to him pursuant to the tenor of his annexed Complaint.

And have you then there this Writ with full return of your proceedings thereon.

WITNESS the Honorable Presiding Judge of the Circuit Court of the First Circuit at Honolulu aforesaid, this 10th day of March, A. D. 1913.

[Seal]

(S) J. A. DOMINIS,

Clerk.

Served the within Summons as follows: On Inter-Island Steam Navigation Co., Ltd., through James A. Kennedy, its President, on — at Honolulu this

12th day of March, 1913, by delivering to him a certified copy hereof and of the complaint hereto annexed and at the same time showing him the original.

Dated March 12th, 1913.

(S) JOE S. NOBRIGA,
Police Officer.

L. No. 7721. Reg. 4 pg. 187. Circuit Court First Circuit. George E. Ward, Plaintiff, vs. Inter-Island Steam Navigation Company, Limited, An Hawaiian Corporation, Defendant. Term Summons. Issued at 1:10 o'clock P. M., March 10th, 1913. (S) J. A. Dominis, Clerk. Returned at 3:40 o'clock P. M., Mar. 12th, 1913. (S) J. A. Dominis, Clerk.

Motion for nonsuit granted June 26, 1913. (S) C. A. K. Hopkins, Clerk. Honolulu Police Dept. Received Mar. 10, 1913, at 1:40 o'clock P. M. (S) J. K. Kanepuu, Clerk. [37]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant.

Answer.**DAMAGES.**

Now comes the defendant in the above-entitled cause, by its attorneys, Holmes, Stanley & Olsen and Smith, Warren and Hemenway, and for answer to the complaint filed herein, says that it denies each and every allegation in said complaint contained.

**INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED,**

**By HOLMES, STANLEY & OLSON,
(I. M. S.)**

**And SMITH, WARREN & HEMENWAY,
Its Attorneys.**

Filed Mar. 31, 1913, at 2:15 o'clock P. M. [38]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

GEORGE E. WARD,

Plaintiff,

vs.

**INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant.**

Motion to Amend [Complaint].

To the Honorable H. E. COOPER, First Judge of
the Above-entitled Court:

Now comes the above-named plaintiff, by Messrs.
Douthitt & Coke, his attorneys, and hereby moves
to amend his complaint at the bar of this Court by

striking out the words "general superintendent" set forth and contained in the third line of the fourth paragraph of said complaint, on page three thereof, and inserting in lieu thereof the word "foreman."

This motion is made upon the ground that the said words "general superintendent" as set forth above were written in said complaint by mistake in that plaintiff herein was not employed by said defendant in the capacity as a "general superintendent" but as a "foreman," and is based upon all of the papers, pleadings and files herein, and upon this motion.
[40]

Dated at Honolulu, City and County of Honolulu, Territory of Hawaii, this 1st day of May, A. D. 1913.

GEORGE E. WARD,
Plaintiff.

By (Signed) DOUTHITT & COKE,
His Attorneys.

Notice [on Motion to Amend Complaint.]

To the Above-named Defendant, and to Messrs. Holmes, Stanley & Olson and Messrs. Smith, Warren & Hemenway, Its Attorneys.

You and each of you will please take notice that the foregoing motion to amend will be presented to Hon. H. E. Cooper, First Judge of the above-entitled court on Monday, the 5th day of May, A. D. 1913, at the hour of 9:30 o'clock A. M., on said day, or as soon thereafter as counsel can be heard, at the court-

room of said judge in the Judiciary Building in Honolulu aforesaid.

Yours etc.,

DOUTHITT & COKE,

Attys. for Plaintiff.

Service and receipt of copy of above motion and notice this 1st day of May, A. D. 1913, admitted.

(S) HOLMES, STANLEY & OLSON,

(S) SMITH, WARREN, HEMENWAY &
SUTTON,

Attys. for Defendant.

Filed May 1, 1913, at 3:55 o'clock P. M. [41]

[Opinion of Supreme Court, Territory of Hawaii.
Filed March 14, 1914.]

In the Supreme Court of the Territory of Hawaii.

October Term, 1913.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation.

ERROR TO CIRCUIT COURT, FIRST CIRCUIT.

Argued February 20, 1914.

Decided March 14, 1914.

ROBERTSON, C. J., PERRY and DE BOLT, JJ.
Master and Servant—Defective Appliance—Injury
—Proximate Cause.—The defendant having
negligently continued the use of a defective
cable on its coal-conveyor which, by reason of

its defective condition, came off certain pulleys designed to hold it in position, and the plaintiff, an employee of the defendant on the conveyor, in attempting to restore the cable to its proper position was injured. The question, whether the proximate cause of the plaintiff's injury was the negligence of the defendant in failing to furnish a reasonably safe cable for use, is not a question of science or legal knowledge, but a question of fact for determination by a jury.

[42]

Opinion of the Court by DE BOLT, J.
(PERRY, J., Dissenting.)

This is a writ of error to review a judgment of nonsuit entered in the Circuit Court of the First Circuit,—the sole assignment of error being the granting of the motion for nonsuit and entry of judgment thereon. The record sent up in response to the writ shows that George E. Ward, the plaintiff in error, hereinafter called the plaintiff, brought an action against the Inter-Island Steam Navigation Company, Limited, the defendant in error, hereinafter called the defendant, to recover damages in the sum of \$50,000 for personal injuries sustained by him on July 8, 1912, as the result of the alleged negligence of the defendant while the relation of master and servant existed between them.

On and prior to the date of the accident which occasioned the injury to the plaintiff complained of in his action, the defendant, as a part of its business, maintained and operated in Honolulu a coal-con-

veyor used for the purpose of unloading coal from ships made fast to the wharf on which the conveyor was constructed. The conveyor consisted of an elevated double-track railway, circular at each end, about twenty-five feet in height above the wharf, and upon which railway coal-cars were moved by an endless steel cable about 2800 feet in length operated by an engine and drum situated under the conveyor on the wharf. The cable was held in position at the circular ends and curves of the railway by pulleys. Near the engine-house a weighted box was suspended on the cable for the purpose of keeping it taut when in use, which could be raised or lowered by block and tackle.

At the time of the accident the plaintiff had been in the employment of the defendant about eight years as machinist in its shops and as foreman at the coal-conveyor, occasionally going to sea as engineer on one of the defendant's boats. [43]

While the plaintiff was engaged at the conveyor as foreman his chief work was on the ships superintending the discharging of coal, but his duties also required him to go upon the conveyor, see that everything was in order, and to attend to the general working thereof.

In the view we take of the case it will not be necessary to enter into a detailed statement or analysis of the evidence. Suffice it to say, that the evidence adduced by the plaintiff tended to show that at the time of the accident and for a period of about three weeks prior thereto, the steel cable then in

use on the coal-conveyor was roughened by usage, small strands of wire about 1/16 of an inch in length projecting; that this roughness of the cable gave it a tendency when in motion to climb on the pulleys and hence a greater tendency to come off; that by reason of its condition it did come off the pulleys; that it was in a dangerous and unsafe condition; that it was unfit for the use and purpose required of it; that it had been in use about ten months; that the life of a cable such as the one in question was about eight months; that the defendant had notice, as well as actual knowledge, of the condition of the cable and promised the plaintiff that a new cable would be put in; that the plaintiff relying upon the promise of the defendant to put in a new cable continued in the performance of his duties; that on the day of the accident, while the plaintiff was engaged in the performance of his duties on a ship discharging coal, the cable came off the mauka four of the mauka series of eight pulleys, of which fact he was informed; that he immediately proceeded to the conveyor; in the meantime the engine which propelled the cable was stopped and the cable brought to rest; that upon reaching the place where the cable was off, the plaintiff, with the assistance of others, [44] endeavored to replace it by using crowbars to pry it back into position, when, suddenly, the cable came off the remaining pulleys of this series, struck him with great force and hurled him to the wharf below, a distance of about twenty-five feet, whereby he sustained serious and permanent injuries.

We will assume for the purposes of this opinion that the evidence adduced by the plaintiff showed that the defendant was guilty of negligence in furnishing a defective cable for use on its coal-conveyor.

At the close of the plaintiff's case the defendant moved for a nonsuit on the following grounds: (1) That the plaintiff had failed to show that the defendant was guilty of any negligence; (2) that the proximate cause of the accident was the plaintiff's own act; (3) that the plaintiff was guilty of contributory negligence; (4) that the plaintiff assumed all the risk of the employment which resulted in the accident.

While the Court below was of the opinion that the evidence adduced tended to show that the cable was defective, it held, however, that there was no evidence tending to show that the slipping of the cable from the pulleys at the time the plaintiff was endeavoring to restore it to its proper position was the result of the defective condition of the cable, and, therefore, granted the motion on the first ground. As to the second, third and fourth grounds of the motion, the Court held, and we think correctly, that they presented questions of fact for determination by a jury. As to the act of the plaintiff in attempting to replace the cable in the manner disclosed by the record, neither the Court below nor can this Court, as a matter of law, say that he was guilty of contributory negligence. The state of the evidence was such that different minds might honestly draw different conclusions from it; the questions thus presented being questions of fact [45]

clearly within the province of a jury to determine. *Nuley v. Southwestern Cotton Seed Oil Co.*, 64 L. R. A. 145, 151; *McGrath v. Texas & P. Ry. Co.*, 60 Fed. 553; *George v. Clark*, 85 Fed. 608.

The defendant contends that the defective condition of the cable was not the proximate cause of the plaintiff's injury, because, after it came off the pulleys and was at rest, its defective condition ceased to operate or have anything to do with the events which followed, admitting, however, that when it came off the pulleys while in motion, if it had then struck the plaintiff and injured him, it might properly have been claimed that the defective condition was the proximate cause of the injury.

The plaintiff, of course, contends that the negligence of the defendant in continuing the use of the cable in its defective condition was the primary and proximate cause of the accident resulting in his injury, and that the defendant, therefore, is liable. Upon the evidence as disclosed by the record now before us this question as to the liability of the defendant should have been submitted to the jury. 21 Am. & Eng. Ency. Law (2d ed.), 508; 2 Labbatt, Master and Servant, § 805.

Actionable negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such person would not have done. *Grand Trunk Railway Co. v. Ives*, 144 U. S. 408, 416; *Baltimore & P. R. Co. v. Jones*, 95 U. S. 439, 441; 1 Thompson on Negligence, § 1.

If the defendant failed to furnish the plaintiff

with a cable reasonably safe for the use and purpose required (and the evidence tends to show that it did so fail), then it was guilty of negligence; and (as suggested by counsel for the defendant), if the cable, when it came off the pulleys while in motion, had [46] struck the plaintiff and injured him, there could be no question as to his right to recover. The connection between the negligence and the injury would then have been direct, natural and continuous. Obviously, the negligence of the defendant would then have been the primary and proximate cause of the injury. The question now presented by the record, however, is, whether the negligence of the defendant in failing to furnish a reasonably safe cable was the proximate cause of the plaintiff's injury? In other words, was the injury the natural and probable consequence of the defective cable, and should it have been foreseen in the light of the attending circumstances? These, of course, are questions of fact, peculiarly within the province of a jury to determine.

In *Milwaukee & St. P. R. Co. v. Kellogg*, 94 U. S. 469, 474, Mr. Justice Strong said: "The true rule is that what is the proximate cause of any injury is ordinarily a question for a jury. It is not a question of science or of legal knowledge. It is to be determined as a fact, in view of the circumstances of fact attending it. The primary cause may be the proximate cause of a disaster, though it may operate through successive instruments, as an article at the end of a chain may be moved by a force applied to the other end, that force being the proximate cause

of the movement, or as in the oft-cited case of the squib thrown in the market-place. 2 Bl. Rep. 892. The question always is, Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? It is generally held, that, in order to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and [47] probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances. * * * We do not say that even the natural and probable consequence of a wrongful act or omission are in all cases to be chargeable to the misfeasance or nonfeasance. They are not when there is a sufficient and independent cause operating between the wrong and the injury. In such a case the resort of the sufferer must be to the originator of the intermediate cause. But when there is no intermediate cause, the original wrong must be considered as reaching to the effect, and proximate to it. The inquiry must, therefore, always be whether there was any intermediate cause disconnected from the primary fault, and self-operating, which produced the injury. Here lies the difficulty. But the inquiry must be answered in accordance with common understanding. * * * In the nature of things, there is in every transaction a succession of events, more or

less dependent upon those preceding, and it is the province of a jury to look at this succession of events or facts, and ascertain whether they are naturally and probably connected with each other by a continuous sequence, or are dissevered by new and independent agencies, and this must be determined in view of the circumstances existing at the time."

It is fundamental, of course, that in an action founded upon the alleged negligence of a defendant, the negligence must be the proximate cause of the injury alleged; and it is also true, that where there is an "intermediate cause disconnected from the primary fault," such as an intervening human agency, "self-operating," which comes between the act of negligence and the injury, the negligence alleged is not the proximate cause of the injury, unless a reasonable and prudent person should have foreseen that his negligent act would set the intervening cause or human agency in motion. The crucial question, the pivotal fact, [48] in the case at bar is, therefore, whether the "primary fault," the negligence of the defendant, and the injury to the plaintiff are "naturally and probably connected with each other by a continuous sequence, or dissevered by a new and independent agency." This is not a question of science or legal knowledge, but a question of fact for a jury to "answer in the light of all the attending circumstances, and in accordance with common sense and understanding." 29 Cyc. 499, 500; Watson, Damages for Personal Injuries, §§ 32, 36, 58, 62, 177; Southern R. Co. v. Webb, 59 L. R. A. 109, 112; City of San Antonio v. Porter, 59 S. W.

922; Shippers' Compress & Warehouse Co. v. Davidson, 80 S. W. 1032; Gudfelder v. Ry. Co., 207 Pa. 629; Hampson v. Taylor, 15 R. I. 83; Mahogany v. Ward, 16 R. I. 479, 483; St. Joseph & G. I. R. Co. v. Hedge, 44 Neb. 448, 458; Purcell v. St. Paul City Ry. Co., 48 Minn. 134; Missouri K. & T. Ry. Co. of Texas v. Raney, 99 S. W. 589.

In Chicago R. I. & P. R. Co. v. Moore, 43 L. R. A. (N. S.) 701, 706, a case analogous to the case at bar, the plaintiff was employed by the company as a fireman on one of its locomotive engines, which was sent out in a defective condition, and while out on the road got out of order. An examination disclosed that the "eccentric" was broken. It was the duty of the plaintiff to make emergency repairs while on the road. While engaged in making the repairs, the "straps," which fastened the "eccentric" to the axle, broke and injured the plaintiff. The Court said (p. 706): "But in this case the repairs, under the circumstances, were made necessary by the negligence of the company, and enhanced the risk of the injury. The intervention of the act of the plaintiff between the negligence of the company and the injury should have been anticipated. When the engine broke, it became necessary to repair. The plaintiff could not go off and leave it. It should have been foreseen that he would attempt to remedy the defect and thereby incur the risk of injury. The defendant is charged with [49] knowledge of the defect, and knowing the defect it must have known that some sort of injury was likely to result. It must have known that if nothing worse happened the shaft

would break, and that it would be necessary to repair it, and thereby the risk of injury would be enhanced. It is true, as argued by the defendant, the plaintiff could have gone off and left the engine, but it should have been so anticipated that he would not do so, and that he would attempt to repair it just as he did."

The case at bar is clearly distinguishable from those cases wherein the injury was the result of an independent intervening cause. *Pass Ry. Co. v. Trich*, 117 Pa. 390; *McFarlane v. The Town of Sullivan*, 99 Wis. 361; 29 Cyc. 499, 500; *Elliott v. Alleghany County Light Co.*, 204 Pa. 568; *Cole v. German Sav. & L. Soc.*, 63 L. R. A. 416.

The questions presented by the evidence in the case at bar, as disclosed by the record before us, and which should have been submitted to the jury for determination, are, in effect, whether it was the duty of the defendant to have foreseen that the cable, by reason of its defective condition, would come off the pulleys; whether the plaintiff would thereupon attempt to restore it to its proper position; and whether the injury sustained by the plaintiff was the natural and probable consequence of the defendant's negligence. In other words, whether or not the intervening cause—the human agency—was set in motion by the defendant's negligence.

The plaintiff also claims that his injuries were caused by the lack of a guard-rail and platform at the head of the conveyor—the place where the accident occurred.

It appears from the record that the plaintiff was fully aware of the condition of the conveyor when he

accepted employment thereon and at all times during his employment, and that he had [50] never made any complaint concerning it. There is nothing in the evidence tending to show that he continued in his work relying upon any promise to change the condition of the conveyor in the respect mentioned. Whatever the risks were, we think under the circumstances disclosed by the record, the plaintiff assumed them.

The plaintiff having made out a *prima facie* case was entitled to have it submitted to the jury.

The judgment of nonsuit is reversed, a new trial is granted and the cause remanded with directions to deny the motion for nonsuit.

E. A. DOUHITT (DOUTHITT & COKE on the brief), for Plaintiff.

C. R. HEMENWAY, I. M. STAINBACK and W. L. STANLEY (SMITH, WARREN, HEMENWAY & SUTTON and HOLMES, STANLEY & OLSON on the brief), for Defendant.

A. G. M. ROBERTSON.

J. T. DE BOLT. [51]

**Judgment [of Supreme Court, Territory of Hawaii,
Filed March 25, 1914.]**

DISSENTING OPINION OF PERRY, J.

While concurring in what is said in the foregoing opinion on the subject of the assumption by plaintiff of the risks incident to the lack of a guard-rail and a platform at the head of the coal-conveyor, I

I respectfully dissent from the view that the question of proximate cause should have been submitted to the jury and from the conclusion that a nonsuit was incorrectly ordered.

There is no doubt that what is the proximate cause of an injury is ordinarily a question for a jury; but when the facts are all undisputed and the inferences necessary to sustain the plaintiff's case are not legally deducible from those facts, the question is solely one of law for the Court. *Teis v. Smuggler, Mining Co.*, 158 Fed. 260, 269; *Jennings v. Davis*, 187 Fed. 703, 713; *Clark v. Wallace*, 51 Colo. 437, 439. In the case at bar the question was, in my opinion, one of law for the Court.

There was, it is true, evidence tending to show that the cable in its worn and frayed condition had a "tendency to climb" on the pulleys and thus to leave them and that the defendant was therefore guilty of negligence in continuing the use of the cable; and if in leaving the pulleys for this reason the cable had caused injury to an employee without any fault of the latter, the negligence would clearly have been the proximate cause of the injury and the defendant would have been liable. But although in the instance under consideration the cable did (always assuming, as we must, that the plaintiff's evidence was true) leave four of the pulleys in consequence of its defective condition, no one was injured thereby. That fact is beyond dispute. The cable was stopped and it was only after it was entirely at rest that the plaintiff attempted to replace

it behind the pulleys and in the attempt received the injuries complained [52] of. There is not the slightest evidence to support a finding that the defective condition of the cable contributed in any degree to its leaving the second set of four pulleys or to its slipping from the crowbars then being used to restore it to its proper place. For aught that is made to appear to the contrary by the evidence, the slipping of the cable from the second set of pulleys and its hurling of the plaintiff to the dock below may have been either a pure accident or the result of plaintiff's own negligence. The burden was upon the plaintiff to make a *prima facie* showing that the fall was caused by some negligence of the defendant and was not a mere unavoidable accident.

The proximate cause of an injury may be distant in time and in place, it may operate through successive instruments, but to be such it must appear that the injury was the natural and probable consequence of the negligence or wrongful act and that it ought to have been foreseen in the light of the attending circumstances. *R. R. v. Kellogg*, 94 U. S. 469, 474. "A natural consequence of an act is the consequence which ordinarily follows it—the result which may be reasonably anticipated from it. A probable consequence is one that is more likely to follow its supposed cause than it is to fail to follow it." *Cole v. German Savings & Loan Soc.*, 124 Fed. 113, 115. In a general sense every act or event leads up to and is the cause of some subsequent act or event and, inversely, every act or event

is in some degree influenced by and is the consequence of some earlier act or event. But in that broad sense causes and consequences are unknown in the law of negligence. Certainly in the law, justice and expediency require the imposition of narrower limits in the field of recovery and it is therefore well established that "a prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give [53] rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause of the injury." 29 Cyc. 496; *R. R. v. Columbia*, 65 Kan. 390, 399. In the case at bar there was no casual connection, within the meaning of the rule, between the defendant's negligence in using the defective cable and the plaintiff's injury. With the bringing of the cable to rest, the continuity in the chain of events was broken. As far as is disclosed by the evidence, either a pure accident or the plaintiff's negligence, following the plaintiff's act in attempting to replace the cable, was the proximate cause of the injury. The defendant's negligence and the consequent leaving of the first four pulleys by the cable merely furnished the condition or gave rise to the occasion by which the injury was made possible and any finding by a jury to the contrary would find no support in the evidence. So also did the defendant's employment of plaintiff, plaintiff's acceptance of that employment and defendant's erection and maintenance of the coal-conveyor give rise

to the occasion and yet none of these could properly be regarded as the proximate cause of the injury.

It seems to me that the jury would not be justified in declaring that plaintiff's fall was the natural and probable consequence of the continued use of the defective cable, in other words, in charging the defendant with the duty of foreseeing the fall, any more than in holding that it should have foreseen that plaintiff in hastening to the spot where the cable was off the pulleys would stumble and fall to the dock below or that the man in charge of the engine in attempting to stop the machinery and thus bring the cable to rest would have his hand caught in the machinery, requiring amputation of a part of the arm. [54]

The plaintiff, who was a skilled engineer and machinist and was entirely familiar with the coal-conveyor and its operation, in accepting the employment assumed its ordinary risks. *Kohn v. McNulta*, 147 U. S. 238, 241; *Tuttle v. R. R.*, 122 U. S. 189, 195, 196. As far as the evidence discloses this was one of them. It is not made to appear that the accident could not as well have happened with a non-defective cable at rest as with a defective cable at rest, or, in other words, that the defective condition contributed to the accident. The burden was on the plaintiff throughout to establish a *prima facie* case.

Much reliance is placed by plaintiff upon the case of *R. R. v. Moore*, 43 L. R. A., N. S., 701, decided by the Supreme Court of Oklahoma. Possibly that

case can be distinguished in its facts from that at bar. The engineer, whose main duty was to operate the engine on the road, was said by the Court to be under a duty to repair "only in cases of emergencies such as the company by reasonable care could not provide against"; and the Court in its opinion (pp. 705, 706) expressly made the reservation that, "neither could an employee regularly engaged in repairing the machinery of the company recover for an injury received as the one complained of here, however negligently the necessity for repairs might have been caused, because it was his regular business to repair and the danger in his employment was exactly the same, whether the repairs were made necessary by negligence or accident." In the case at bar the undisputed evidence is that the plaintiff was regularly engaged in repairing the machinery of the conveyor, just as he was regularly engaged in superintending its operation. It was his regular business to repair, whether the repairs were made necessary by accidents resulting from negligence or by causes not involving negligence; and the danger in his employment was exactly the same in the one [55] class of repairs as in the other. The case at bar would seem to fall, not within the principle of the actual decision in the Moore case, but within the principle of the reservation. If, however, the cases are not thus distinguishable and if the Court in the Moore case goes to the extent of holding that upon facts such as exist in the case at bar the defendant's negligence was the proximate cause of the injury, it does not appeal

to me as sound and I respectfully decline to follow it.

In my opinion the plaintiff failed to show that the defendant was guilty of any negligence which could have been properly found by the jury to have been the proximate cause of the injuries complained of and the motion for a nonsuit was properly granted.

ANTONIO PERRY.

Filed March 14, 1914, at 10:15 A. M. [56]

In the Supreme Court of the Territory of Hawaii.

October Term, 1913.

GEORGE E. WARD,

Plaintiff in Error,

vs.

INTER-ISLAND STEAM NAVIGATION CO.,

LTD., an Hawaiian Corporation,

Defendant in Error.

Judgment.

ERROR TO CIRCUIT COURT, FIRST CIRCUIT.

In the above-entitled cause pursuant to the opinion of the above-entitled court, filed March 14, 1914, the judgment of nonsuit is reversed, a new trial is granted and the cause remanded with directions to deny the motion for nonsuit.

Dated, Honolulu, T. H., March 25, 1914.

By the Court.

[Seal]

J. A. THOMPSON,

Clerk Supreme Court.

Filed March 25, 1914, at 2:45 P. M. [57]

Instruction No. 1a.

I instruct you, gentlemen of the jury, that
^{Refused,}
^{W. J. B.} there is no evidence tending to prove that
the negligence of the defendant, if any, was
the proximate cause of the injuries sustained by
the plaintiff, and that your verdict must be for the
defendant. [58]

*In the Circuit Court of the First Circuit, Territory
of Hawaii.*

January Term, 1914.—ROBINSON, 3d Judge,
Presiding.

L. 7721.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation.

Verdict.**TRESPASS ON THE CASE.**

We, the Jury in the above-entitled cause, find for
plaintiff, and assess and award damages in the sum
of THIRTEEN THOUSAND DOLLARS.

(S) ROBERT M. MORTON,

Foreman.

Dated Honolulu, T. H., June 19th, 1914.

Filed at 10:50 o'clock P. M., June 19th, A. D.
1914. [59]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant.

Motion for New Trial.

Comes now the defendant herein, by its attorneys, Holmes, Stanley & Olson and Smith, Warren, Hemenway & Sutton, and moves for a new trial in the above-entitled cause on the following grounds:

1st. That the verdict returned herein on the 19th day of June, 1914, is contrary to the law and the evidence and the weight of the evidence;

2d. That the damages awarded by said verdict are excessive and not justified by the evidence given in said cause;

3d. That the Court erred in admitting evidence offered by plaintiff, the defendant duly noting exceptions to the rulings of the Court thereon, as appears by the transcript of evidence herein;

4th. That the Court erred in rejecting evidence offered by defendant, the defendant duly noting exceptions to the rulings of the Court thereon, as appears by the transcript of evidence herein.

The transcript of the stenographer's notes, the record of the clerk and all the exhibits, papers and

files herein are referred to [60] and made a part of this motion.

Dated: Honolulu, T. H., June 27th, 1914.

INTER-ISLAND STEAM NAVIGATION
CO., LTD.,

By HOLMES, STANLEY & OLSON,
SMITH, WARREN, HEMENWAY & SUT-
TON,

Its Attorneys.

Filed Jun. 27, 1914, at 11:10 o'clock A. M.

Monday, Jun. 29, 1914. Motion denied.

(S) M. T. SIMONTON,
Clerk. [61]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant.

Judgment [of Circuit Court, Territory of Hawaii].

This action came on regularly for trial before the Honorable WILLIAM J. ROBINSON, Third Judge of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, on the 22d day of May, A. D. 1914, the plaintiff herein appearing in person and by his attorneys, Messrs, Douthitt & Coke, and the defendant appearing by its attor-

neys, Messrs. Smith, Warren, Hemenway & Sutton, and Messrs. Holmes, Stanley & Olson; a jury of twelve men was duly and regularly impaneled and sworn to try said cause; witnesses on the part of plaintiff and defendant sworn and examined; and after hearing the evidence, the arguments of counsel, and instructions of the Court, the jury did, on the 19th day of June, A. D. 1914, retire to consider their verdict. That subsequently, on said last mentioned day, said jury returned into court and being called answered to their names and said:

“We, the jury, in the above-entitled cause, find for the plaintiff, and assess and award damages in the sum of Thirteen Thousand Dollars.

(Signed) ROBERT M. MORTON,

Foreman.” [62]

WHEREFORE, by virtue of the law, and by virtue of the premises aforesaid, it is ORDERED, ADJUDGED and DECREED that the said GEORGE E. WARD, plaintiff herein, do have and recover from the said INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian corporation, defendant herein, the sum of THIRTEEN THOUSAND (\$13,000.00) DOLLARS, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of NINETY-SEVEN and 20/100 (\$97.20) DOLLARS.

DONE IN OPEN COURT, at Honolulu, City and

38 *Inter-Island Steam Nav. Co., Ltd.,*
County of Honolulu, Territory of Hawaii, this 29th
day of June, A. D. 1914.

[Seal] (S) W. J. ROBINSON,
Third Judge of the Circuit Court, First Judicial Cir-
cuit, Territory of Hawaii.

Filed Jun. 29, 1914, at 9:45 o'clock A. M. [63]

385.

GEORGE E. WARD

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED.

VOL. I. [64]

No. 817. Received and filed in the Supreme
Court, Dec. 24, 1914, at 3:15 P. M. Robert Parker,
Jr., Assistant Clerk.

CIRCUIT COURT.

Dec. 24, 1914.

FIRST JUD. CIRCUIT. [65]

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[Opening Statement of Mr. Douthitt.]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January Term, 1914.

May 25, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

Jury empaneled and sworn.

Opening statement of Mr. Douthitt.

Mr. DOUTHITT.—Gentlemen of the jury, we expect to show to you in this case that plaintiff, George E. Ward, at the time of the accident and injury complained of in the complaint was a mechanic employed in the Inter-Island Steam Navigation Company's shops on River street, near the waterfront; that he had been employed for some seven or eight years past by the Inter-Island Steam Navigation Company; that most of the time he was engaged as a machinist or mechanic in the shops of the Inter-Island Company; that he earned about one hundred and fifty dollars per month, on an average; that he was about forty years of age at the time of the accident; that the Inter-Island Steam Navigation Company, as part of their business, maintained a coal-conveyor at a point along the waterfront near

or opposite the Honolulu Iron Works; that the coal-conveyor was laid on a circular track and started in at the sea end and went around by curves until it got to a place in the yard where the coal was dumped; that the coal was loaded at the extreme Waikiki side of the coal-conveyor from the ships, the coal ships that came in; that it was taken by means of cranes and cars, buckets of coal being taken up and dumped into the hoppers on the Waikiki side or on the left-hand [68*—1†] side as you look towards the sea and then put into cars under the house and as they were loaded the grips were put onto the cable and by such means cars were drawn along the track until they reached a point at the extreme north or mauka end of the coal-conveyor, which was called the coal-yard. These cars were first weighed at the scale. There was a scale-house and after being weighed the car loaded with coal was taken along on the Waikiki side of the track and then dumped, automatically dumped, in the coal-yard. The construction of the cars was such that in the center there was, you might call it a cone, forming an angle something as I have my hands here, and on the sides of the car these sides opened out allowing all of the coal which was on that incline or decline to dump overboard into the coal-yard. They were automatically dumped. No person is of course required around there to dump them. After the coal had been dumped from the

*Page-number appearing at foot of page of Original Certified Transcript of Record.

†Original page-number of Testimony as same appears in Original Certified Transcript of Record.

car, the car then proceeded around the head of the coal-conveyor and the coal-yard and came around on the Ewa side of the track and then waited its turn until such time as it was necessary to load the cars at the Waikiki side, then it was gripped on the cable and it pursued its way along on the Waikiki side performing the same operation as before, being dumped in the coal-yard and returning on the Ewa side. That was the system which was adopted.

We further expect to show you, gentlemen, that Mr. Ward, the plaintiff in this case was engaged on the coal-conveyor as a foreman when coal ships were in; at other times he was engaged in the machine-shops of the Inter-Island Steam Navigation Company. That when a coal boat was in he was down in the hold of the ship superintending the discharge of the coal, the unloading of the coal into buckets which were taken up by the crane and dumped into the hoppers. That that was his principal duty. Very seldom or only upon occasion was he called to go on top of the coal-conveyor. That about a month before this accident the attention of Mr. Gedge, who was the secretary and treasurer of the Inter-Island Steam Navigation Company, was called to the condition of [69—2] this cable. It was worn, it was frayed and stranded, strands had come out. At that time we expect to show, gentlemen, that there was no coal boat in, and the way that the attention was drawn to it was, that there was the drum around which the cable was rove at the engine which propelled the cable was worn, and at that time Mr. Ward, the plaintiff in this case,

called Mr. Gedge's attention to the fact that the cable was not in a proper condition, that the strands were coming out, that it was old and worn and advised a new cable being put in. That Mr. Gedge, the secretary and treasurer of the company told Mr. Ward, never mind about the new cable, we will get along with that, but we will put in a new drum. That Ward was under the directions of Gedge and could do nothing down there until he was ordered to do it. Ward was then taken from the machine-shop and they put in a new drum, but no new cable was put in because Mr. Gedge said there was no necessity for putting it in. That between two and three weeks after that a coal boat came in, that is, a foreign boat loaded with coal. Sometimes such boats are loaded with four, five and six thousand tons. That the cable was being used constantly from seven o'clock in the morning until the afternoon in that condition; that it had got off on one occasion from the pulleys at the extreme makai end due to its defective condition because the strands caught or rose on the pulleys. It slipped off the dollies or pulleys on four or five occasions prior to the accident. That three days or more, particularly on Saturday,—the witnesses will call it three days because they figure Saturday one day, Sunday one day and Monday one day,—the accident happened on Monday, July 8th, 1912,—that three days before the accident or more particularly on Saturday the cable came off the pulleys again; that there was no way of that cable coming off the pulleys save and except its defective condition. It frequently came off in the coal-yard

due to lumps of coal falling on the track. That it came off on this occasion Saturday; that the workmen attempted to restore it which they [70—3] did; that after the cable had started up again and operations were resumed it was seen that the cable had a tendency to lift up on the pulleys as it was going around which was not the case with a good cable, and it was seen that the condition of the cable,—the poor and stranded condition of the cable was such as to make it come off; that Mr. Ward, the plaintiff in this case, went upon the coal-conveyor for the purpose of seeing what made this cable come off on that occasion and he saw that it was due to the stranded and barbed condition of the cable when he saw it in operation; that he then consulted with Mr. Gedge, the secretary and treasurer of the company and told him the condition of the cable and asked him to put a new cable in; that Mr. Gedge promised him that he would put in a new cable and that the plaintiff in this case, Mr. Ward, relied upon the promise of Mr. Gedge that he would put in a new cable; that it would take a day or thereabouts to install a new one; that Sunday could have been utilized for that purpose; that Mr. Ward, relying upon the promise of the secretary and treasurer of the company under whose instructions he was acting that a new cable would be put in went to work in the usual way on Monday morning the day of this accident; that he did not go upon the coal-conveyor because his duties called him upon the ship to superintend the discharging of the coal; that between nine and ten o'clock on the morning of the 8th day of

July, 1912, on Monday morning, suddenly his attention was called to the fact that the cable was off. And if anything went wrong with the coal-conveyor he was supposed to put it back, that was his duty to fix it temporarily. That he went up there and he saw that the cable was off four pulleys, due as we contend to its defective condition; that he began with the other workmen, attempted to restore the cable to its proper position around the pulleys in order that work might be resumed and while being in the act, there being slack enough to put the cable back there, apparently slack enough to put it back to its position, the cable suddenly flew out [71-4] from all the pulleys carried Mr. Ward overboard down onto the dock below which was a distance of about twenty-five feet and he landed on his head and suffered a fracture of the skull, suffered a concussion of the brain and suffered a distortion of the spine and also suffered a fracture of the pelvic bones, the cup that holds up the entire body. You have seen a skeleton where the bones of the hip socket into the pelvic bones which is really the cup that holds up the body, this was fractured by the force with which he was hurled through the air, to the dock below.

We will also show you, gentlemen, that at the time of the accident and prior to the accident there was absolutely no protection at the end of the coal-conveyor; that there was neither platform nor rail there and nothing to impede his progress as he went through the air; that he was hurled overboard due as we contend to the continuing in use of a defective cable, known to be defective by the company and of

which they had been advised some three weeks or a month prior to the date of this accident.

We will show you, gentlemen, by the medical testimony that as a result of these injuries that he sustained by reason of the negligence of this company that Mr. Ward is a cripple for life; that he will never recover, can never pursue his usual avocation of machinist and mechanic; that he knows no other trade or any other business and was relying upon that and was relying upon it for his means of livelihood and support.

If we show you these facts, gentlemen of the jury, as we contend, that the defective condition of the cable was the cause of this accident to Mr. Ward and that he was injured in the manner in which we have described we expect at your hands a substantial verdict in his behalf.

(The COURT, counsel and jury visit the scene of the accident.)

Mr. DOUTHITT.—We will simply put Mr. Ward on at the present time for the purpose of proving this model. [72—5]

Mr. STANLEY.—Yes.

[Testimony of George E. Ward, for Plaintiff.]

Direct Examination of GEORGE WARD, called for the plaintiff, sworn.

The CLERK.—Your name, please.

A. My name?

Q. Yes. A. George Edward Ward.

Mr. DOUTHITT.—Mr. Ward you are the plaintiff in this case?

(Testimony of George E. Ward.)

A. I am.

Q. Who constructed this model representing a coal-conveyor or a section of coal-conveyor belonging to the Inter-Island Steam Navigation Company? A. I did.

Q. I will ask you whether or not it is a correct representation of the coal-conveyor of the Inter-Island Steam Navigation Company? A. It is.

Q. I observe at the makai end a number of pulleys or dollies and I will ask you whether the construction of these pulleys or dollies differs in any respect from the construction of the pulleys and dollies of the Inter-Island Steam Navigation Company, on the 8th day of July, 1912?

A. In their position they do not differ but in the number of pulleys they differ.

Q. That is to say, there were how many pulleys around here for example, we will exclude the eight pulleys the first eight, how many pulleys were there at that time excluding the first eight?

A. There was sixty around that big curve there.

Q. Sixty around the big curve? A. Yes, sir.

Q. At the makai end? A. At the makai end.

Q. How many pulleys were there at the beginning of the curve on both sides? A. Eight. [73-6]

Q. On each side?

A. On each side, eight on each side.

Q. Now, with regard to planking at the extreme makai end of the coal-conveyor I will ask you whether this model correctly represents the condi-

(Testimony of George E. Ward.)

tion at that time? A. Yes, sir, it does.

The COURT.—Is that model built to scale, Mr. Ward?

A. It is built to scale as each one of these is about three inches apart that represents ten feet.

Q. It is built to scale?

A. Yes, sir, as near as I could get it to a scale, such a fine figure.

Mr. DOUTHITT.—I will call your attention to the model of the coal-conveyor at the extreme makai end and I will ask you whether this model is in the same condition as it was on the date of the 8th day of July, 1912? A. Yes, sir.

Q. Where on the model is the place representing the scale-house? A. Right here, about here.

Q. Right immediately over the drum?

A. Yes, sir.

Mr. DOUTHITT.—Let us mark the scale-house.

Q. It extended right across?

A. Right across and open for the cars to pass through.

Q. Then the scale-house is over here like that is it not?

A. It extends—it is all one house with two scales in.

Q. I call your attention, Mr. Ward, to the small paper box under the position which you have designated as a scale-house, what does that represent on the model?

A. That represents the artificial means for taking

(Testimony of George E. Ward.)

the slack from the drum.

Q. Is this what they call the weight?

A. That is the weight, called the weight.

Q. Now, there is something lacking in this weight with regard to the weight which was used on the coal-conveyor of the Inter-Island Steam Navigation Company, what is that that is lacking?

A. It is lacking a chain that is connected here.

Q. From the bottom of the box?

A. With a chain, that is [74—7] connected to the wharf with a timber crossing this way with an eye-bolt, there is a chain.

Q. What is the purpose of the chain?

A. The purpose of that chain is to keep this whole weight and the whole thing from coming up here, what we call two blocks and striking up against one another and breaking the sheaves.

Q. Now, I observe two towers a representation of two towers on this model; what is the purpose of those towers?

A. The purpose of those towers is for taking the coal out of the ship's hold raising up to the boom and then running it in and dumping it into a hopper here.

Q. Where is the hopper?

A. The hopper is situate projecting out here about this far that the coal dumps into.

Q. About this far. I call your attention—

A. Projecting of the hopper out here.

Q. From what portion of the coal-conveyor?

A. From this portion of the coal-conveyor.

(Testimony of George E. Ward.)

Q. From the steel structure itself?

A. From the steel structure itself.

Q. This is built of steel, I understand you?

A. Yes.

Q. We are calling attention to the makai tower and mauka tower, do they both serve the same purpose? A. Yes.

Q. For the purpose of taking the coal up in buckets then slinging it around in place where it is required and dumping it into the hoppers?

A. No, sir, it runs it in.

Q. Run it in by means of what?

A. By weight of the bucket will work itself in by working itself in here and when it is in position to dump the bucket is opened and the coal dumped into the hopper.

Q. I notice on the model two little—I don't know what you call those. A. Dollies. [75—8]

Q. What is the purpose of those?

A. For running out the bucket over the hold and letting the bucket come back to the hopper.

Q. There are two wheels missing on each one of these dollies at the present time? A. Yes.

Q. Where are the means of starting and stopping the drum, controlling and carrying the cable located? A. Right about a little bit mauka.

Q. In the scale-house?

A. No, sir, up on the platform. There was a wheel there with a rod is connecting down until it comes onto the throttle.

(Testimony of George E. Ward.)

Mr. DOUTHITT.—And we will mark that point A.

That is A, that is correct, is it?

A. Yes, sir.

Q. It is where the rod is which connects with the throttle to start and stop the engine which propels the cable? A. Yes, sir.

Q. Now, Mr. Ward, will you please explain to the jury by means of this model where these ropes—where the wire rope goes and through what it goes before it continues on its way over to the coal-yard? Do you understand what I mean, gentlemen? Explain the working of that cable on the model as compared with conditions as they exist down there.

A. This is the hauling cable, it runs here and goes down these sheaves and down to the drum at the engine. It has got four turns around that drum, from there it goes through this sheave here down to the sheave of the box, back again to the sheave here, then to this sheave, then to this sheave represented here and from there it goes on down around the coal-yard all the way around, returns back again on this Ewa track until the cars, the empty cars get up, on the makai end and is stopped mauka of the tower.

Q. Are the towers in proper position now?

A. No, sir, this tower should be here. [76—9]

Q. I am just asking you to explain the model to the jury where the cable is, that is all.

A. Then the cable comes around these pulleys here on the Waikiki side from those pulleys and

(Testimony of George E. Ward.)

goes on the Ewa side of these pulleys around the large curve.

Q. That is around the sixty pulleys?

A. Around the sixty pulleys. After it comes off the sixty pulleys then it goes on the Ewa side on these eight pulleys.

Q. The Ewa side or insides?

A. The Ewa or inside of the eight pulleys.

Q. And is that the same with regard to the other end of the coal-conveyor, this end here?

A. This end here is the same as the other end in the coal-yard.

Q. Now, Mr. Ward, you have said that this part of the cable which I am holding in my hand, that is the main cable running down from the makai end to the first sheave on the conveyor which is at a position mauka of the scale-house?

A. Mauka of the scale-house.

Q. Is what you call the hauling cable?

A. Yes, sir.

Q. Now, what do you call the other portion of the cable?

A. This portion here I call it the tail rope. The tail rope it is always behind the cars.

Q. Then the hauling cable goes down through the sheave? A. Down through that sheave.

Q. At a point marked B, down around the drum about which it is wound four times?

A. Four times. There are four turns on the drum.

Q. Then still the hauling cable proceeds around a

(Testimony of George E. Ward.)

sheave? A. Yes, sir.

Q. Immediately above the weight or box?

A. Yes, sir.

Q. Down under another sheave which connects the weight or box to the hauling cable?

A. To the tail rope. [77—10]

Q. Where does your tail rope begin, what portion of the coal-conveyor or cable, of the conveyor or cable, what do you mean by the tail rope?

A. The tail rope begins behind the car leaving,—in fact the tail rope is behind all cars in motion.

Q. Then it is in behind the cars that are in motion after they drop—after they pick up the new cable?

A. In picking up the new cable you are asking?

Q. You drop the cable and pick up what?

A. Then you pick up the tail rope.

Q. Which is going in the same direction?

A. Same direction.

Q. Then that portion of the cable which you referred to as the tail rope is the portion of the cable which the cars have gripped after becoming detached from the hauling cable at the scale-house?

A. At the scale-house.

Q. Yes. When they are detached from the hauling cable at the scale-house and the grip of the car is put on another cable that is what you call the tail rope, is that so?

A. Yes, sir, behind that car that has been connected with the cable.

Mr. DOUTHITT.—Of course, if your Honor please, we reserve the right of calling Mr. Ward

(Testimony of George E. Ward.)

later in the case in chief. This is only for the purpose of proving the model.

Mr. STANLEY.—There will be no objection to that.

Mr. DOUTHITT.—We offer the model in evidence and ask that it be marked Plaintiff's Exhibit "A."

Mr. STANLEY.—No objection to its going in. I would like to examine Mr. Ward.

The COURT.—The model may be received in evidence and marked Plaintiff's Exhibit "A."

[78—11]

Cross-examination of GEORGE E. WARD.

Mr. STANLEY.—Mr. Ward, you told the judge that this model was drawn practically to scale?

A. Practically to scale.

Q. You don't mean that these towers, for instance, are placed on this conveyor according to scale? A. No, sir.

Q. That there is no such distance as is represented here between the towers as it was at the time of your accident and as it is shown here, it was much nearer makai was it not, the tower?

Mr. DOUTHITT.—That is going into the case in chief.

Mr. STANLEY.—I am asking in order to elicit the fact as to where it should be.

Q. Anyhow, Mr. Ward, it does not purport to show the position of the towers at the time of your accident?

A. Do you mean, Mr. Stanley, where that tower is standing now?

(Testimony of George E. Ward.)

Q. Yes. A. By scale?

Q. Yes.

A. No, I have not got those by scale.

Q. All these towers represent is the way they are placed on the upper rails?

A. No, it represents that these towers set on the upper part of the rail and can be shifted.

Q. And can be what?

A. Can be shifted, can be moved.

Q. Besides the chain which you say is on the box down there at the wharf you have also attempted to place on your model the block and tackle by which that weight can be raised or lowered?

A. Why, when we raised the box we raised it by means of the block and tackle.

Q. A block and tackle was there all the time was it not, that is not shown on the model?

A. It is not shown on the [79—12] model.

Q. If it were a correct model it would be there, wouldn't it?

A. The model is a model of the coal-conveyor, representing the coal-conveyor on the wharf, not the yard, not going from the wharf to the yard, but it is representing the coal-conveyor that is on the wharf.

Q. But if it is a correct model, if you are putting in a weight you would necessarily put in a block and tackle by which that weight can be raised and lowered?

A. I don't understand you now, Mr. Stanley. I understand the English part of it but—

(Testimony of George E. Ward.)

Q. This purports to show the weight, does it not?

A. Yes.

Q. This cardboard box? A. Yes.

Q. But in the coal-conveyor it is connected with that weight, there was a block and tackle which could be used for lowering and raising that weight?

A. Up on this here.

Q. Yes, the block and tackle and rope, the tackle being fixed around these uprights?

A. The hauling.

Q. Yes, hauling?

A. Yes, but the tackle was not connected to the box.

Q. Oh, no. Your model also is defective, is it not, Mr. Ward, in the fact that you do not show in the track around the track-rollers over which the cable passes?

A. I show on this model these pulleys where the pulleys goes round the curves.

Q. Yes, but you do not show—I will ask you is it not a fact that on the coal-conveyor there are rollers at intervals of some fifty feet or so and situated in the middle of the track over which the cable passes?

A. There are rollers situated all along the track.

Q. And they are not shown here?

A. They are not shown here, no, sir. [80—13]

Q. Now, when you speak of the tail rope and a hauling rope you don't want the jury to understand, do you, that there are two ropes? A. No, sir.

Q. It is all one continuous rope, is it not?

A. It is an endless rope.

(Testimony of George E. Ward.)

Q. It is an endless rope? Now, you speak of the tail rope as always behind the cars?

A. Yes, we call that the tail rope because it is behind the car going into the yard and behind the cars that is in motion.

Q. But is not that tail rope—we have left the scale-house—is not the tail rope the rope which moves the cars on which the rope moves?

A. No, it is the hauling side of that car, not the tail side of the car.

Q. You call one part of it a hauling rope until it goes to the scale-house, that is the hauling rope, is it not, that brings the car to the scale-house?

A. That is the hauling cable that brings that car to the scale-house.

Q. And it is the tail rope is it that takes it around to the coal-yard? A. No.

Q. The same rope?

A. They have the tail rope, that part of the tail rope, this car is not connected onto that. So it is the tail rope of this car which is in motion after this car is gripped, then it is the tail rope behind that car. That is the meaning of the tail rope.

Q. It is the same old rope?

A. It is an endless rope.

Q. Just describe to the jury exactly what this throttle attachment is that you say should appear at the point marked A.

A. The attachment. The throttle is down in the engine-room, so to have it so that the man can stop it above there is a fork in that and that continues up

(Testimony of George E. Ward.)

here and a good wheel is put on that so that they can immediately shut the steam off on top, [81—14] he does not have to run down to the throttle to shut off the steam.

Q. Situate about ten feet away from and mauka of the scale-house?

A. It is mauka of the scale-house, how far I could not tell you, I never measured it.

Q. About how far, Mr. Ward, you know the place very well; it is about ten feet, is it not?

A. I could not say for sure, may be between eight and ten and eleven, somewhere around there.

Q. And there is a wheel there which is operated by hand and which either starts or stops the engine; when they shut the steam the engine is stopped and when they open the steam the engine starts?

A. Yes, sir.

Q. And it is done with a turn of the wrist?

A. Yes, sir.

The COURT.—What was the motive power, Mr. Ward, employed on the 8th day of June, 1912, in the operation of that cable? A. Steam.

Mr. STANLEY.—We, of course, reserve the full right of cross-examination.

Q. Unless my eyesight deceives me these pulleys—you call them— A. Pulleys.

Q. They appear to me as if the face of them were perpendicular, straight up and down, is that the condition of the pulleys on the conveyor?

A. What is that?

Q. It appears to me as if you had drawn these pul-

(Testimony of George E. Ward.)

leys as if the face were perpendicular?

A. They are not perpendicular.

Q. Are they intended to be represented as perpendicular?

A. They are not perpendicular, they are cone shaped.

Q. Tapering down towards the bottom?

A. Towards the bottom, yes.

Q. That is, they are wider at the top, and they taper down to the flange?

A. Taper down to the flange, yes, sir. [82—15]

[Testimony of James Merseberg, for Plaintiff.]

Direct examination of JAMES MERSEBERG, called for the plaintiff, sworn.

Mr. DOUTHITT.—Where do you reside, where do you live, Mr. Merseberg? A. Out at Kalihi.

Q. Where? A. Kalihi, at Kalihi.

Q. Speak a little louder, so that we all can hear. What is your business? A. Laborer.

Mr. STANLEY.—What is that?

The COURT.—Laborer, he says.

Mr. DOUTHITT.—Have you ever worked for the Inter-Island Steam Navigation Company?

A. Yes.

Mr. DOUTHITT.—It is admitted by counsel and may appear of record that the Inter-Island Steam Navigation Company, the defendant in this case, is a corporation, organized and existing under and by virtue of the laws of the Territory of Hawaii, and was such on the 8th day of July, 1912, the date of the

(Testimony of James Merseberg.)

accident to the plaintiff in this case, and as such corporation owned, maintained and operated a coal conveyor in Honolulu opposite the Honolulu Iron Works.

Mr. STANLEY.—That is admitted.

The COURT.—Very well, let the admission be shown.

Mr. DOUTHITT.—When did you work for the Inter-Island Steam Navigation Company?

A. I worked there before George had the trouble.

Q. How long had you worked for the Inter-Island Company before George Ward, the plaintiff in this case, got hurt? A. About two years.

Q. Two years? A. Yes, sir.

Q. And what was your work?

A. Worked on the coal-conveyor. [83—16]

Q. Working on the coal-conveyor? A. Yes, sir.

Q. Belonging to the Inter-Island Company?

A. Yes, sir.

Q. What part of the coal-conveyor were you working on?

Mr. STANLEY.—What time?

Mr. DOUTHITT.—During these three years before George got hurt, two years before George Ward got hurt?

A. I worked underneath the tower, the mauka tower.

Q. What is that?

A. I worked over here under this tower.

The COURT.—Speak a little louder.

A. I worked under this tower here.

(Testimony of James Merseberg.)

Mr. DOUTHITT.—Did your work ever call you out towards the makai end? A. Hey?

Q. Did you ever have to go to work at the makai end of the coal-conveyor?

A. Yes, sir; to kokua they get this trouble and get me to go there.

Q. Now, were you empolyed by the Inter-Island Company all the time, or only once in awhile?

A. Worked there when a coal boat come in.

Q. Worked there when a coal boat came in?

A. Yes, sir.

Q. Did you see the condition of the cable?

The COURT.—Would you rather speak English or Hawaiian? A. Rather Hawaiian.

Q. What?

A. Yes, talk Hawaiian, I understand talk Hawaiian better.

Q. You would rather speak Hawaiian, would you?

A. Yes, sir.

The COURT.—Mr. Beckley, will you kindly act as interpreter?

Mr. DOUTHITT.—Did you ever have occasion to observe the condition of the cable belonging to the Inter-Island Steam Navigation Company prior to the accident to the plaintiff in this case? [84—17]

A. Yes, sir.

Q. How long before the 8th day of July, 1912, did you observe—when did you observe the condition of that cable? A. Three days prior.

Q. With the exception of three days, did you see it

(Testimony of James Merseberg.)

before those three days?

Objected to as leading. Objection sustained.

Q. What was the first time that you observed the condition of the cable prior to the time that George was hurt, the condition of the cable?

A. Well, the reason why I noticed the condition of the cable was when the cable slipped off the pulleys before George met with the accident and had to be replaced.

Q. Was that the first time prior to George's accident that you observed the condition of the cable; that is, was that the first time that you observed that was the condition of the cable?

A. Well, no; the first time I started to go up there when the ship came in, I noticed the bad condition of the cable.

Q. How long before George was hurt did you start to work on that ship?

A. I had started to work Monday on the week previous, and it was the following week when George met the accident.

Q. What was the condition of the cable when you first saw it—when you saw it, when you first went to work on that coal ship a week prior to the accident, as you have testified?

A. The wire strands of the cable had parted in places and become spurred.

Q. How far, if you observed, were the burs or strands sticking out of the cable when you first observed it, when you first saw it, when you went to work there?

(Testimony of James Merseberg.)

A. Nearly the whole length of the cable.

Q. Well, how far were the strands—you say it was throughout [85—18] the length of the cable; how far were the strands sticking out, or burs sticking out, from the main part of the cable, as you observed it, when you first went there to work about a week prior to the accident to the plaintiff in this case?

Mr. STANLEY.—I object to that; there is no evidence that there are any strands sticking out.

Objection sustained.

Mr. DOUTHITT.—Describe a little more in detail what you mean by burred?

A. The strands of the cable were broken in places so that the ends stuck out.

Q. Do you mean the wires or the strands?

Objected to as leading. Objection sustained.

Q. What do you mean by strands?

A. Well, the individual wires that made up the strands of the cable.

Q. To what extent were these individual wires that made up the strands projecting?

A. Some of them stuck out as much almost as an inch.

Q. And what did the others stick out?

A. One-sixteenth, two sixteenths, three-sixteenths and an inch.

Q. I will ask you whether that was the condition of the cable—whether that condition obtained throughout the entire length of the cable?

Objected to as leading. Objection sustained.

Q. At what intervals of the cable was it that the

(Testimony of James Merseberg.)

wires stuck out all the way from one-sixteenth to an inch, as you have described?

Objected to as leading. Objection sustained.

Q. How much of the cable was in that condition?

A. Well, I noticed that the whole cable as it passed around was about in the same burred condition; that is, the cable was worn out and the wires or strands were burred.

Q. Now, you went to work there. You first went to work on [86—19] the week prior to George Ward's accident, how many days did it take to get out the first coal boat?

Objected to as incompetent, irrelevant and immaterial, and having no bearing upon any of the issues of the case.

The COURT.—What occasioned its use is of no concern.

Mr. DOUTHITT.—I will reframe the question.

Q. I will ask you whether or not the cable was in use from the time that you went to work there on the last occasion when you went to work there up to the time that George Ward was hurt?

Objected to as leading.

Mr. DOUTHITT.—From the time that you went there to work there on the occasion—from the time that you went to work and immediately—a week prior to the time that George Ward was hurt, how much of the time was the cable in use?

A. We started to work Monday, and we worked up to Saturday, and the cable was used every day.

(Testimony of James Merseberg.)

Q. And how many hours a day was it used, in use?

A. Started to work at seven o'clock in the morning and quit at five.

Q. Do you remember what day that Mr. Ward was hurt?

A. I don't remember the day of the week, but it was the 8th of July.

Q. Now, by the cable being worked from Monday that you said you started in to work up to the Saturday, what do you mean that the cable was doing, what work was it subjected to, if any?

A. Pulling coal-cars.

(Here the Court, after the usual admonition to the jury, adjourned until to-morrow morning, May 26th, at 8:30 o'clock.) [87—20]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January Term, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

May 26th, 1914.

Direct Examination of JAMES MERSEBERG,
resumed.

Mr. DOUTHITT.—By July 8th, what year do you mean, last year of year before last, do you remember?

(Testimony of James Merseberg.)

A. 1912.

Q. Did anything happen with regard to the cable prior to the time that Mr. Ward was hurt?

A. The cable was spoilt.

Q. I will call your attention to the Saturday immediately prior to the Monday when Mr. Ward was hurt, and I will ask you if anything happened regarding the cable on that day?

A. Saturday prior to the accident the cable came off and we replaced it on the pulleys, and then we noticed as the cable was started to work we noticed it running up and down on the side of the pulleys.

Q. Do you remember what time of day that was when the cable came off on the Saturday immediately prior to Mr. Ward's injuries?

A. I don't remember, it may have been in the afternoon. [88—21]

Q. It may have been you don't remember the time it was? A. No.

Q. Now, how far was the cable on that occasion, that is, on the Saturday?

A. It came off the makai end.

Q. Will you please illustrate on this model the condition of the cable when you first saw it on the Saturday immediately prior to the time that Mr. Ward was hurt, that is, on the Saturday?

A. Somewhere like that. (Illustrating.) About in this position. (Illustrating.)

Mr. DOUTHITT.—The first pulley on the Ewa side of the coal-conveyor in a semi-circle, it came off between the first and second pulley on the Ewa side

(Testimony of James Merseberg.)

of the coal-conveyor between the—between the first and second of the body of sixty pulleys.

Mr. STANLEY.—And extending almost to the extreme or makai point of the center of the curve.

Mr. DOUTHITT.—Yes, that is right.

Q. Where were you when the cable came off the pulleys on that occasion on the Saturday?

A. I was under the mauka tower working.

Q. And what did you do?

A. Akina, the foreman, called out to us to go down and lift the drum below, the weight.

Q. Before lifting the weight, did you go anywhere on the coal-conveyor?

A. I started to go makai towards where the place of the cable was that went off, and before I got half way, I was somewhere between the two towers and Akina called us to go down below.

Q. From your position between the two towers, I will ask you whether or not you could see the cable at the makai end? A. I could not see.

Q. How was the engine stopped on that occasion?

A. Jimmie Akina called out to stop the machinery.

[89—22]

Q. How was the engine stopped with regard to whether it was slow or fast?

A. Stopped immediately.

Q. What was the next thing that you did?

A. I went down below to lift the weight up.

Q. And was the weight raised? A. Yes.

Q. After raising the weight, what was done?

(Testimony of James Merseberg.)

A. We came back on the conveyor and replaced the cable on the pulleys.

Q. When you got to the conveyor, what was the condition of the cable with regard to slack to put it back? A. There was slack.

Q. After replacing the cable, what did you do?

A. Went down below again to lower the weight.

Q. Before lowering the weight, did you observe what slack there was which you had derived by raising the weight? A. There was slack in the box.

Q. What became of the slack at the weight—when you raised the box, did you get any slack?

Objected to as being already asked and answered.

Objection sustained.

Mr. DOUTHITT.—Where was the slack, Akina or Merseberg, where was the slack after replacing the cable around these pulleys when you got back to the weight for the purpose of lowering the weight—before you lowered the weight, did you observe the condition of the slack at the weight?

A. Well, when we lifted the weight there was a slack at the box of the weight there, and when we came down to lower that weight the slack was still there.

Q. The slack was still at the weight. Do you know where the slack came from which enabled you to put back that cable around the pulleys in the Saturday immediately prior to the accident?

Objected to as indefinite and unintelligible, and already [90—23] asked and answered.

Objection overruled. Exception.

(Testimony of James Merseberg.)

A. Well, the machine was suddenly stopped, the cars were on the tracks, still moving, gave the necessary slack.

Q. When the engine is stopped, Mr. Merseberg, I will ask you whether the cars that are on the track stop instantly?

Mr. STANLEY.—Do you mean on this occasion?

Mr. DOUTHITT.—No, no, as a general rule, he knows the conditions down there.

A. When the machinery is stopped, the cars move on until it stops.

Mr. DOUTHITT.—Momentum. After you lowered the box on the Saturday immediately before the accident, I will ask you whether or not you had occasion to observe the cable at the makai end as it was running around the pulleys.

A. The only time I came makai there was when the cable was off, and we came there to replace it, and afterwards it started running.

Q. After it started running, what was the cable doing; did you see after it run around the makai end, did you observe?

A. Well, the cable ran up and down the side of the pulleys.

Q. Do you know, Mr. Merseberg, what caused the cable to run up and down the pulleys at that time?

Objected to, that the witness has not qualified to testify on the subject.

Objection sustained. Exception.

Mr. DOUTHITT.—Now, Mr. Merseberg, have you seen new cables running around, or good cables

(Testimony of James Merseberg.)

running around the makai end of the coal-conveyor during the time that you were employed there?

A. Well, yes, I have seen a good cable in operation down there in that conveyor, but I never saw a good cable running up and down on the sides of the pulleys as I saw the cable doing [91—24] on that day in that manner.

Q. Did you have an opportunity, Mr. Merseberg, after the cable had been started, of observing the condition of the cable on the Saturday immediately prior to the time that Mr. Ward was hurt?

Objected to *ask* already asked and answered.

Objection sustained. Exception.

Mr. DOUTHITT.—At the time the cable came off the pulleys on the Saturday prior to the Monday Mr. Ward was hurt, was coal being loaded from the vessels, or unloaded, or what was being done?

A. There was a coal vessel alongside the conveyor there, and the coal from the vessel was being put on to cars.

Q. Now, on which side of this coal-conveyor with respect to which track were these cars being loaded with coal? A. On the Waikiki track.

Q. And would return on which track when emptied of coal? A. On the left track.

The COURT.—The Ewa track?

A. The Ewa track.

Mr. DOUTHITT.—Do you remember how you re-stored the cable to its position around the pulleys on the Saturday immediately prior to Mr. Ward's accident?

(Testimony of James Merseberg.)

A. Lifted the cable in our hands and replaced it.

Q. You remember the occasion of Mr. Ward's accident, do you? A. Yes.

Q. What time of day did that occur?

A. It was in the forenoon, between nine and ten o'clock.

Q. And on what particular portion of the coal-conveyor were you working at that time?

A. I was under the mauka tower.

Q. Where was Mr. Ward before the accident happened? A. He was on the vessel.

Q. Now, what was the first thing that happened with respect to the accident that morning?

A. Well, the cable came off. [92—25]

Q. Where? A. Makai.

Mr. DOUTHITT.—Coming off on the makai four pulleys of the group of eight on the Ewa side.

Q. What was the first thing that you did when you learned that the cable was off?

A. Well, George came up and ordered us to go and get bars and go and replace the cable.

Q. Where was Mr. Akina at that time, if you know?

A. I didn't see him there that time; he may have been in the coal-yard.

Mr. STANLEY.—I move that the answer be stricken out.

Mr. DOUTHITT.—I consent that it may go out.

The COURT.—Very well, it may go out.

Mr. DOUTHITT.—Where was he with reference to this makai end of the coal-conveyor at the date of

(Testimony of James Merseberg.)

George Ward's accident, where was he at the time the cable came off, where was Akina when the cable came off, where was Akina, if you know?

Mr. STANLEY.—Was he there?

Mr. DOUTHITT.—Was he there? A. No.

Q. Did you get the bars? A. Yes.

Q. And what did you do after the bars were procured?

A. We came over and pried the cable back into position.

Q. I will ask you at the time that you came back and pried the cable back into position whether there was any slack at that makai end in the cable?

A. Yes, there was.

Q. How much?

A. Well, I cannot say exactly how much slack there was. From my own experience, having to replace that same cable before that time, in my judgment there was sufficient slack to enable us to replace the cable.

Q. And by saying according to your experience in replacing the cable before, I will ask you whether or not it was the replacing of the cable at the makai end or other portions of the coal-conveyor? [93—26]

Objected to as leading.

Objection overruled. Exception.

A. In the coal-yard.

Q. What was the usual and customary manner of restoring the cable to its position around the pulleys when it got off in the coal-yard in the same manner as it was on the date of George Ward's accident?

(Testimony of James Merseberg.)

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any of the issues of the case.

Objection sustained. Exception.

Mr. DOUTHITT.—How is the cable restored when the cable is off, for example, four pulleys?

Same objection.

Objection sustained. Exception.

Mr. DOUTHITT.—What did you do to replace the pulleys—to get back the cable?

Objected to as indefinite.

The COURT.—On this occasion.

Mr. DOUTHITT.—On the occasion of the accident.

A. I used a crowbar.

Q. And what happened while you were in the act of replacing the cable?

A. The next thing was that George fell over and down below and the cable got off eight pulleys.

Q. The cable got off these eight pulleys and George fell down below to what? A. On to the wharf.

Q. Did George fall down to the wharf before the cable got off the pulleys, or after the cable got off the pulleys?

Q. Well, he fell over at the same time that the cable sprung and got off the entire eight pulleys.

Q. Well, what made him fall, if you know?

A. The cable slipped from the bar, that is how it happened. [94—27]

Q. Will you just describe, get down here and ex-

(Testimony of James Merseberg.)

plain to the jury how George happened to be knocked down?

A. George had his bar in this position (illustrating) trying to lift the cable back into position.

Q. Where was the cable at the time he went over?

A. When George fell, the cable was off the eight pulleys.

Q. Well, now, at the time just immediately prior—

The COURT.—Off the eight pulleys on which side of the eight pulleys? A. On the Ewa side.

Mr. DOUTHITT.—Now, at the time, what progress had you made or had George made together with the others to get that cable off, and get it over to the pulleys at the time the accident happened? Just show how you had got the cable up.

A. The cable was in that position (illustrating), and George had his crowbar in the act of lifting the cable up when it slipped off the eight pulleys.

Q. How far did the cable have to go—did you have to pull the cable to restore it to its position around these four pulleys, and how many inches, if you know? A. Two or three inches.

Q. And then as I understand you, it slipped out of its position, the whole thing, and Ward fell down on the wharf? A. Yes, sir.

Q. Do you know what made George fall over?

Objected to as already asked and answered.

Objection sustained. Exception.

Q. What was the condition of the cable at that particular time, if you know, at the time that Ward

(Testimony of James Merseberg.)

was hurt? A. It was in a bad condition.

Q. What do you mean?

A. The individual wires of the strands were broken in places and sticking out.

Q. What did Mr. Ward fall on, what did he fall on? A. On to the wharf. [95—28]

Q. Below? A. Yes.

Q. Are you employed by the Inter-Island Steam Navigation Company at the present time?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any issues of the case.

Objection sustained.

Mr. DOUTHITT.—When did you sever your connection with the Inter-Island Steam Navigation Company?

Same objection. Objection sustained. Exception.

Q. What are you doing at the present time?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

The COURT.—The ruling is vacated and set aside and the objection sustained. Exception.

Mr. DOUTHITT.—How long did you continue to work for the Inter-Island Steam Navigation Company after George Ward was hurt?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon any of the issues of the case.

Objection sustained. Exception.

(Testimony of James Merseberg.)

Cross-examination of JAMES MERSEBERG.

Mr. STANLEY.—You worked, Mr. Merseberg, you say, under the mauka of the two towers on the coal-conveyor, referring particularly now to the Saturday before Ward was hurt, is that right?

A. Yes.

Q. And what was your duty there?

A. Filling the car with coal.

Q. Filling the cars with coal. And what is the operation, how is that filling of the car performed? Describe the operation [96—29] of filling the car and your duties in connection with it.

A. Well, there is a hopper under that tower there with a door and there are two ropes. We pull one rope and the coal runs into the car and we pull the other rope and shut off the opening of the hopper.

Q. This hopper is like a chute, is it not?

A. Yes.

Q. There being a gate at the lower end of the chute and just above the car you are filling?

A. Yes.

Q. And your work was to see that the car was filled and see that when it was filled that the gate of the hopper, the chute, was closed? A. Yes.

Q. And that was all your business there, was it not?

A. When there were cars around and empty it was my duty to have them filled. When there were no cars in sight I did other work.

Q. What other work were you attending to on this Saturday?

(Testimony of James Merseberg.)

Q. I don't remember exactly what kind of work I attended to aside from filling up the cars on that date, that is all I remember distinctly at this date is the fact of our being called to go and replace the cable.

Q. You were one of the extra hands employed by the Inter-Island whenever a coal ship was in port and discharging coal, that is so, is it not?

A. Yes.

Q. And your main duty was just to stand there under the mauka tower and watch the filling of the cars?

A. We were not there at all times. Sometimes I would be placed there and sometimes I would be placed in the coal-yard.

Q. On that Saturday your duty was under the mauka tower? A. Yes.

Q. You had nothing to do with the running of the cable? A. No, another boy attended to that.

Q. Now, when was it that you first observed the condition of [97—30] the cable?

A. The Monday that I went there to work.

Q. What day was that?

Objected to as indefinite.

Q. What day of the month was it?

A. I think it was the first of the month.

Q. The first of July, is that right? A. Yes.

Q. Now, will you state a little more particularly what you actually noted was wrong with the cable?

A. Well, I noticed the burred condition of the cable throughout its entire length because Akina

(Testimony of James Merseberg.)

ordered me to grease up the pulleys and I had to do that around the makai end as well as the pulleys around the whole conveyor, to the coal-yard, oil the pulleys there, oil them and oil the track as well.

Q. And at what interval on this cable would these wires be projecting?

A. Well, I didn't pay any particular attention as to the whole length as to whether there was any good part of the cable left, my recollection is and my impression at the time was that this burred condition of the wire or cable was throughout its entire length.

Q. So that I understand these wires were projecting as far as you could see throughout the entire length of the cable, is that right?

A. Yes, I think so.

Q. And how far out from the main body of the cable did the wires project?

A. Well, from one-sixteenth of an inch, some two-sixteenths of an inch, some three-sixteenths of an inch, some almost an inch.
some almost an inch.

Q. And were these projections perpendicular to the main body of the cable or how were they?

A. Well, they were not all in the same position, some were sticking out and some were just slanting, following the run of the cable.

Q. Well, in what position were the majority of the wires that were sticking out, horizontal or perpendicular to the line [98—31] of the cable?

A. Well, I cannot say as to whether the majority

(Testimony of James Merseberg.)

of the wires were sticking perpendicular or not, all I remember is that the wires stuck out from the cable differently.

Q. But you do remember distinctly, do you, that a number of them anyhow were sticking out on a line perpendicular to the main body of the cable?

A. Yes.

Q. Now, what would be the average length of the projection of the wires to the length of the cable?

A. I cannot answer that because I did not stop to count the number of strands sticking out to tell which was the larger proportion, whether the wires sticking out perpendicular to the cable were more than the short ones.

Q. My question is this, you observed the general condition of the cable; I want to know if it looked to you as if the projections averaged nearly an inch or averaged nearly one-sixteenth of an inch, whether they were only occasionally an inch out or half an inch out and throughout the main body generally it was one-sixteenth?

A. Well, the short length wire and the longer wire were about equal, that is the long ones and short ones in about the same position all along the cable.

Q. You testified, did you not, Mr. Merseberg, in the last trial of this case? A. Yes.

Q. That was about June of last year?

A. Yes, sir.

Q. Is it not a fact that at that trial you said nothing about the wires sticking out an inch or three-sixteenths of an inch or two-sixteenths of an inch,

(Testimony of James Merseberg.)

but said under examination by Mr. Douthitt that the projections were about one-sixteenth of an inch and that is all?

A. Well, I remember testifying some of the wires were sticking out one-sixteenth of an inch because I was asked as to that length but I don't remember of being asked whether they were longer or projecting out more than one-sixteenth, you know. [99—32]

Q. Is it not a fact that you were asked how far these wires were projecting and you said one-sixteenth of an inch, answering in English at the time and made no reference whatsoever to the other projection?

A. Well, at the time I remember your asking me about that, I thought he was referring to the wires of one-sixteenth, and I answered that. At the time I told you repeatedly several times in the trial that I did not understand English properly but you said for me to speak in English.

Q. Is it not a fact, Mr. Merseberg, that Judge Cooper allowed you the services of Mr. Beckley as interpreter and that when you were speaking through Mr. Beckley, the questions put to you through Mr. Beckley as to how long these wires were sticking out that you said in English immediately, one-sixteenth of an inch?

A. Well, I was asked that question and I answered, one-sixteenth of an inch. I was not questioned further on that matter.

Q. Now, you say you observed the condition of this cable when you went down to work there on

(Testimony of James Merseberg.)

July 1st; as I understand you the next time you had occasion to observe it particularly was on the Saturday before Mr. Ward was hurt, is that right?

A. Yes.

Q. And on the occasion of this Saturday you say you were working under the mauka tower when you heard that the cable had come off the makai end of the track, is that right?

A. Yes, sir, as it got off I started to run makai when someone called me to run back.

Q. Then you say you got an order from Akina to run down below and raise the weight, is that right?

A. Yes.

Q. And you did raise the weight, did you not, using the block and tackle which it kept near the weight for the purpose of raising and lowering it?

A. Yes.

Q. Who was with you while you were raising that weight?

A. David Kalau, Kaima, Nunu, David Hoolau, myself, Akina, [100—33] these are all the men that I remember at the present time.

Q. Well, did you all go down to work on this block and tackle? A. Yes.

Q. And then you came up? You got the weight up and came back and you and these other men I take it came to the makai end of the conveyor and put the cable back in position by hand? A. Yes.

Q. And what did you do after that when you got the cable back?

A. After the cable started to run I remained there

(Testimony of James Merseberg.)

with Akina after it started running.

Q. What was done with the weight after you got the cable restored to the pulleys?

A. Well, after we replaced the cable we went down below again and lowered the weight.

Q. That is, as I understand you, as soon as you got the cable back on the pulleys you were sent down below to lower the weight? A. Yes.

Q. Now, you have testified that you don't know what part of Saturday this occurred, it may have been in the afternoon, but you don't know. I will ask you how long did it take from the time that you found that the cable was off until you had it restored again, until you had it restored back on the pulleys?

Mr. DOUTHITT.—Do you mean for the entire operation after raising the weight and lowering the weight?

Mr. STANLEY.—Yes.

Q. How long did it take from the time that you observed the—from the time that you got the order to raise the weight until you had lowered the weight again? A. Twenty or thirty minutes.

Q. And by that time the cable was in operation again? A. Yes.

Q. Now, when was it—you say having put the cable back into position you were ordered to go down and lower the weight again [101—34] and did so; when was it that you observed the raising tendency of this cable on the pulleys?

A. I came down makai here and saw the cable as it started to run there and noticed how it was run-

(Testimony of James Merseberg.)

ning up and down the sides of the pulleys.

Q. After it had started again, after you had lowered the weight, is that right? A. Yes.

Q. What was your business down there?

A. Well, it was a part of our duties, it is customary whenever the cable slips off the pulleys there when it is replaced and started again it is our duty to go around and see that it is working well.

Q. Who was down there at the time?

A. Akina.

Q. Akina was there, and Akina was foreman?

A. Yes.

Q. He did not order you to go down to the makai end after the thing started, did he?

A. He did not order me on that particular occasion, but that is a part of your duties.

Q. Who else besides Akina was there?

A. Akina is the only one I remember now.

Q. Where was Mr. Ward at that time?

A. I think he was there but I am not quite sure.

Q. And how long did you remain there watching this raising motion?

A. Oh, about two or three minutes, then I went back to my work.

Q. Now, whereabouts on the conveyor was it that you were watching this raising motion?

A. I was standing in about this position (illustrating).

Mr. STANLEY.—He was standing on the planks on the makai end of the conveyor watching the

(Testimony of James Merseberg.)

action of the cable on some of the set of eight pulleys on the Ewa side. That is right, is it?

A. Well, watching the cable as it went around all the pulleys on the makai end of the conveyor.

Q. Well, where was it that you noticed the raising motion?

A. Well, on all these pulleys. [102—35]

Q. And that continued, did it, all the time you were there?

A. Yes, it was continuing in that way when I left and went back to my work.

Q. And how close up to the top of the pulleys did the cable come in this raising motion?

A. Well, the middle part of the pulley is narrower than the top and the cable would run to the middle of the pulleys and raise a little above the middle of the pulley and then down again.

Q. Does the cable generally run about the middle of the pulleys?

A. Well, the cable in good condition will run about the middle of the pulley without raising up or down.

Q. Is it not a fact that the cable runs in a groove at the foot of the pulley just above the flange?

A. Well, there is a groove that is worn around the pulleys about nearly the middle and the cable usually runs in that groove, but when the cable is worn out it gets out of that groove.

Q. I see. Now, how far above in inches or feet or half inches, anything you like, how far above this

(Testimony of James Merseberg.)

groove did the cable rise on this occasion when you were watching it?

A. I could not say how many inches it rose above the usual groove where the cable usually runs when it was in working order but I noticed the cable was out of the groove and above it at times when it was in action.

Q. Well, during this two or three minutes can you give the jury any idea how far that cable was above the groove?

A. Well, the cable was running and in constant motion so I could not tell you how many inches it rose above the usual groove.

Q. Now, is it not a fact, Mr. Merseberg, that at the last trial of this case that you never testified to anything of the kind as having observed that rising motion of the cable on the pulleys?

A. I was not asked as to that.

Q. And you did not testify as to anything of that kind, did you? A. No. [103—36]

Q. And just prior to the cable coming off the Saturday the coal-conveyor was in operation?

A. Yes.

Q. And you were engaged in the operation of unloading a ship? A. Yes.

Q. Now, on the morning of July 8th where were you working? A. Under the mauka tower.

Q. Under the mauka tower, and what was the first you knew of the cable being off the pulleys on that morning?

A. Well, someone called out to George and at the

(Testimony of James Merseberg.)

same time the boy in charge of the key to the engine was called to stop the engine.

Q. Who called out to George—by George you mean Ward? A. Yes, one of the boys.

Q. Who was it? A. David Kalau.

Q. And where was Ward at the time that the boy called out to him? A. He was on the ship.

Q. How do you know that?

A. Well, most of the time he was on the ship.

Q. I am asking you at the time that he was called on the morning of July 8th that he was in the vessel or on the vessel?

A. Well, he came off of the ship.

Q. Did you see him coming off of the ship, after Kalau called him?

A. Well, I didn't see him personally but I was told by those who were working with me that George Ward was on the ship and he was coming up from the ship.

Q. And that is all that you know about George Ward, was at the time of this calling out to you?

A. Well, that he was called, then I was told that he was on the ship and coming from the ship. I started makai on the conveyor and turned around and saw George coming up by the scale-house.

Q. That is the first that you saw of him on that occasion? A. Yes.

Q. And what did you do then?

A. He told me to go [104—37] after a crow-bar.

Q. What?

(Testimony of James Merseberg.)

A. He told me to go after a crowbar.

Q. And you did so? A. Yes.

Q. And came back makai with George, with Ward? A. Yes.

Q. Who was present there at the time of the accident? A. Yes.

Q. Just prior to the cable coming off, the coal-conveyor was in operation, the machinery was in operation?

A. Well, when the cable got off one called out and the machinery was stopped.

Q. Before the cable came off the machinery was in operation and the work of unloading going on?

A. Yes.

Q. After you heard George called for and seen him at the scale-house then you heard the order, did you, to stop the engine?

A. The machine was stopped at the time that George was called for before I saw George at the scale-house.

Q. Before you saw George at all the engine was stopped? A. Yes, sir.

Q. And you came down to this makai end and then you say you saw George attempting to put the cable back on the pulleys?

A. Well, George ordered us to get the crowbar and we all came there and helped put the cable back.

Q. And when you got down there you said you found the cable off in the position you have described; that is off the makai four, off on the Ewa

(Testimony of James Merseberg.)

side of the makai four of the first block of eight pulleys? A. Yes, sir.

Q. That is on the four mauka ones of the four makai? A. Yes.

Q. And then you say that George came down towards the makai set of eight and tried to pry the cable back into position? A. Yes.

Q. Now, it is not a fact, Mr. Merseberg, that at the last trial you testified that the cable was off the four mauka pulleys of the set of eight and on the makai four as I put it there (illustrating).

A. Well, it is so long I may have stated that way but it may be true that off the mauka four instead of the makai four. [105—38]

Q. You mean it is so long since it happened that you forgot how it was? A. Yes.

Q. And you forget whether Ward was prying towards the mauka end of the set of eight pulleys to put the cable back or whether he was at the makai end?

A. Well, if it was mauka pulleys where the cable slipped then he must have been mauka.

Q. And if it was the makai set that was off then he would be trying to put it back, he would be stationed down makai, but you don't remember now where it was?

A. I think the cable got off the four mauka pulleys.

Q. And when you testified in answer to Mr. Douthitt this morning and explained to the jury that it was off the four makai pulleys you were mistaken?

(Testimony of James Merseberg.)

A. Yes.

Q. And the mistake is due to the fact that it happened so long ago that you had forgotten?

A. Yes, sir.

Q. But which ever set—which ever of this set of eight pulleys it was off as a matter of fact when George fell, simultaneously with George falling the cable sprang out afterwards, did it not?

A. Yes, sir.

Q. Now, going back to Saturday for one moment. I think that is about all. Will you explain what you mean by saying that after you had put back the cable on the pulleys on Saturday you came down to the weight and lowered it again and found this slack here, what do you mean by that?

A. Well, that is what I noticed when we lifted the weight up it was a slack caused by lifting it up and when we came to lower it down the slack was still there.

Q. Still there? A. In the box.

Q. The slack was in the box? A. Yes.

Q. What do you mean, coiled up in the box or not? A. The slack was around the box.

Q. What are you referring to as the slack—the slack was [106—39] right down in the body of the box? A. Yes.

Q. And was not distributed at all over the conveyor?

A. There was no slack along the conveyor, the slack I noticed was in the box.

Q. And no slack at all on the conveyor?

(Testimony of James Merseberg.)

A. Well, when we lifted the weight up there was the slack there at the time and then when we came up and replaced the cable around the pulleys, we replaced the cable and I noticed there was also the slack down here.

Q. Now, is it not a fact, Mr. Merseberg, that when you lifted that weight up that immediately the cable right along the track slacked down to the floor of the platform?

A. I did not notice any slack there I ran makai to where the cable was off the pulleys.

Q. You mean to say that you did not notice whether there was a slack or not?

A. I don't think there was any slack mauka.

Q. Mauka of what?

A. Along the track, I did not pay any particular attention.

Q. You say you don't think there was any slack mauka, do you mean mauka of the scale-house or what?

A. Between the scale-house and the makai end.

Q. Between the scale-house and the makai end, but you say you did not notice it one way or the other, is that right?

A. There might have been a slack but I did not notice, I went makai.

Mr. STANLEY.—That is all. [107—40]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, 1914, Term.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

Tuesday, May 26th, 1914.

[Testimony of James Akina, for Plaintiff.]

Direct examination of JAMES AKINA, called for
the plaintiff, sworn.

The CLERK.—Your name, please?

Mr. DOUTHITT.—What is your business?

Mr. STANLEY.—I think this witness speaks
English, your Honor.

The COURT.—Do you desire to speak Hawaiian
or English?

A. Well, I speak a little bit, but not much. I can
talk in my language better.

Mr. DOUTHITT.—What is your business?

A. I am a boiler-maker.

Q. Where? A. At Kahuku on this island.

Q. And what company are you employed by?

Objected to as incompetent, irrelevant and immat-
terial and [108—41] having no bearing on the
issues of this case.

Objection overruled.

A. The wireless company.

(Testimony of James Akina.)

Mr. DOUTHITT.—Have you ever been employed by the Inter-Island Steam Navigation Company?

A. Yes.

Q. And how long were you employed by the Inter-Island Steam Navigation Company?

Objected to as incompetent, irrelevant and immaterial.

Q. Prior to the accident to George Ward, how long were you employed by the Inter-Island Steam Navigation Company? A. Nearly two years.

Q. Nearly two years? A. Five years.

Q. Do you mean five years before George Ward was hurt?

Mr. STANLEY.—How long were you working for the Inter-Island Company before Ward was hurt?

Mr. DOUTHITT.—Before George Ward was hurt how long had you been employed by the Inter-Island Steam Navigation Company?

A. Five years.

Q. Now, what were you doing, what was your work with the Inter-Island Steam Navigation Company during the five years?

A. For two years I worked with George and three years I worked on the conveyor.

Q. And doing what under George?

A. Putting up the coal-conveyor.

Q. And what else did you do besides putting up the coal-conveyor during those two years?

A. And hauling coal.

Q. What position did you occupy during the last three years that you were employed there by the

(Testimony of James Akina.)

Inter-Island Steam Navigation Company before George was hurt? A. I was a luna.

Q. And as a luna where did your duties call you in respect [109—42] to the coal-conveyor?

A. Well, when coal ships came in we were to take off the coal and when Inter-Island boats came alongside the dock there we were to fill them up with coal.

Q. Well, you were employed as I understand you, continuously; you were not a periodical employee, but you were employed continuously during those five years by the Inter-Island Steam Navigation Company? A. Worked continuously.

Q. And how many men did you have under you as luna? A. Eight men, besides myself.

Q. And where were those men employed around the coal-conveyor?

A. Some of the men would be around the towers, some would be on the scale-house.

Q. Yes. A. Some would be in the coal-yard.

Q. Did you ever have occasion to observe the condition of the cable prior to the time when George Ward was hurt?

Mr. STANLEY.—Do you mean the cable that was in operation at the time?

Mr. DOUTHITT.—Yes.

A. Yes, sir.

Q. Now, how long before George Ward was hurt was it that you first observed the condition of the particular cable which afterwards slipped off?

A. More than a month previous.

Q. Now, what was the condition of that cable—

(Testimony of James Akina.)

what was the condition of the cable at that time, that is, more than a month previous to the time that Ward was hurt?

A. It was in poor condition, and the wires had become burred. The wires stuck out.

Q. What did you do, what was the occasion upon which you observed—what was it, how did you come to observe the condition of the cable at that time? Just tell how you observed it, how you came to observe it? [110—43]

A. Well, it is on account of the machinery not working properly—the cable, on account of the wires and strands wearing off and sticking out in coiling around, the machinery didn't work smoothly, so I informed Mr. Gedge of that fact.

Q. By Mr. Gedge, do you mean the secretary and treasurer of the Inter-Island Steam Navigation Company, the defendant in this case? A. Yes.

Q. Where was Mr. Gedge when you informed him?

A. Down in the office.

Q. Well, what did you say to Mr. Gedge?

A. I told him about the cable and the condition of the cable.

Q. Where was he when you told him that?

A. Down in the engine-room of the coal-conveyor.

Q. Now, repeat what you said to Mr. Gedge at that time. A. His very words?

Q. Give it just exactly, as we are going along here, the interpretation.

A. I told him about the cable. I told him that the

(Testimony of James Akina.)

cable was bad, poor.

Q. And what did Mr. Gedge say to that, if anything?

A. He said he was going down to get Mr. Ward.

Q. Then, what happened after that?

Q. Then Mr. Gedge and Mr. Ward come over again and I heard them talking.

Q. What were they saying?

A. Well, I heard Mr. Ward tell Mr. Gedge to have the cable taken out and the drum taken out.

Q. Taken out, what do you mean by that?

A. Have it taken out and replaced by a new cable.

Q. And what did Mr. Gedge say to that, if anything?

A. He said—what I heard him say was that the cable was all right as it was, but the drum could be taken out.

Q. In pursuance of that conversation—to whom did he [111—44] tell that, to whom did Mr. Gedge tell that? You say you understood him to say that the cable was all right, but the drum could be taken out; whom did Mr. Gedge tell that to?

A. To Mr. Ward.

Q. And what was done by Mr. Ward, if anything, after that conversation?

A. Well, we took out the old drum and put a new one in.

Q. Who assisted Mr. Ward in putting in the drum? A. I did.

Q. I will ask you whether or not at that particular time, whether the cable—the coal-conveyor was in

(Testimony of James Akina.)

operation loading or unloading coal? A. Yes.

Q. At that time, when the new drum was put in; do you understand what I mean? Do you understand, Mr. Interpreter, at the time—I am calling his attention to the time when the new drum was put in, whether or not the cable was in operation at that particular time loading and unloading coal, a month prior to the accident, when he heard this conversation? A. Yes, it was in operation.

Q. Do you remember whether foreign ships were being discharged or whether the vessels belonging to the Inter-Island Steam Navigation Company?

A. We were loading the Inter-Island boats with coal.

Q. And between that—between that time when you replaced the—when you put in the new drum and the time when Mr. Ward was hurt, when did the first foreign coal ship come in?

A. Three weeks after that.

Q. Three weeks after the new drum was put in, which was about a month prior to the accident, as I understand it? A. Yes.

Q. Now, during these three weeks, from the time the drum was put in up to the time that the first coal ship came in, I [112—45] will ask you whether the cable was in operation every day or only once in awhile?

A. Well, when the Inter-Island boats would come there to load coal the cable would be only used for a half an hour or hour, that is all, but when foreign

(Testimony of James Akina.)

ships would bring coal, then the conveyor would be used every day.

Q. Do you know about how long it took to unload the first foreign ship after the or just before—the first foreign ship that came in before George Ward was hurt? A. Five days and a half.

Q. And how long—how many hours a day was the cable running during those first five days and a half?

A. Well, it is being used,—the work would start at seven o'clock and work stopped at five o'clock.

Q. Any time for dinner at the noon hour?

A. One hour rest.

Q. How long did it take to discharge the second coal boat? A. About six days.

Q. The number two boat. Put that question again, please. A. About six days.

Q. Now, do you remember the accident, the day of the accident to Mr. Ward? A. Yes.

Q. Do you remember what day of the month, and the year it was?

A. I could not tell you the date, it is some time ago.

Q. Do you know the month and the year?

A. No, I have forgotten it.

Q. But you know the fact of his being hurt?

A. Yes.

Q. Which coal boat were you working on, that is, unloading, at the time that Mr. Ward was hurt, on the day that Mr. Ward was hurt?

A. Well, it was a steel vessel; I don't remember the name now.

Q. I know, but with respect to whether it was the

(Testimony of James Akina.)

first coal [113—46] boat that came in, or whether it was the second coal boat that came in?

A. The first boat.

Q. How did the condition—do you remember whether *the came* off the pulleys at any time between the time that the drum was replaced and the time of the accident to Mr. Ward at the makai end?

A. Yes.

Q. How many times did the cable come off the pulleys at the makai end from the time when the drum was replaced—the new drum was put in, up to the time when George Ward was hurt?

A. Two or three times.

Q. How long prior—when was the last time that it came off, the cable, immediately prior to the time that Ward was hurt? A. Saturday.

Q. What was the—how did the condition of the cable compare between the time when the new drum was put in and the condition of the cable on the Saturday immediately prior to Ward's accident?

A. Well, it was in worse condition than it was on the day when the new drum was put in.

Q. Do you remember the day of the week on which Mr. Ward was hurt? A. Monday.

Q. Now, you said the cable was in worse condition on the Saturday immediately prior to Ward's injury and the time when the drum,—that is the new drum, was put in; explain what you mean by in worse condition?

A. Well, more of the wires of the strands had broken, and were sticking out.

(Testimony of James Akina.)

Q. Do you know whether a cable which was in the condition that you have described it to be, would improve on account of the work to which it was subjected, or deteriorate, or did it improve as to its condition, or did it deteriorate, become worse [114—47] by being subjected to use?

Objected to as being already asked and answered.

Objection sustained.

Mr. DOUTHITT.—How far were the wires sticking out from the cable on the occasion,—we will say, on the Saturday immediately prior to the accident to George Ward?

A. In some places one-sixteenth of an inch, three-eighths of an inch, a quarter of an inch, a half an inch to an inch.

Q. What was the condition of the entire cable with regard to the wires sticking out to the extent which you have described?

A. It was the same all through the whole length of the cable.

Q. Do you know how long that cable was?

A. Well, I didn't make any memorandum of it when the cable was put in use, but if I am not mistaken it was used for sometime; it had been used for some months.

Q. I didn't ask you that, I asked you what was the length of that cable?

Mr. DOUTHITT.—I move to strike the answer as not responsive.

The COURT.—It is so ordered.

(Testimony of James Akina.)

Mr. DOUTHITT.—What was the length of the cable? A. Twenty-eight hundred feet.

Q. What kind of a cable was that?

A. Steel wire.

Q. How many wires in the cable if you know?

A. Do you mean the circumference or diameter?

Q. It was a steel-wire cable? A. Yes, sir.

Q. When you say that the cable had come off two or three times prior to the time when Mr. Ward was hurt, do you mean to include in that the Saturday immediately prior to the injury to Mr. Ward?

A. Yes, sir.

Q. That is at the makai end?

A. Yes. [115—48]

Q. Do you remember the occasion; do you remember whether or not the cable came off the pulleys at the makai end on the Saturday immediately prior to the accident? A. Yes.

Q. Do you remember the time of day that was?

A. Yes.

Q. What time was it about?

A. Well, it was in the forenoon somewhere between nine and ten o'clock.

Q. That is on the Saturday immediately before the accident? A. Yes, sir.

Q. Now, where were you when you first learned that the cable was off the pulleys at the makai end on the Saturday immediately before the accident?

A. I was in the scale-house.

Q. How did your attention first become directed to the fact that the cable was off the pulleys at the

(Testimony of James Akina.)

makai end on that occasion, that is on the Saturday?

A. I was in the scale-house when somebody called out to me.

Q. And what did you do—do you know who that was that called out to you? A. Yes.

Q. Who was it?

A. Nunu, he is one of the men working on the makai end or side of the conveyor.

Q. And what did you do, Mr. Akina, when you got that information? A. I came down there to see.

Q. And when you got down there what did you observe when you got at the makai end, what did you observe with regard to the cable?

A. Well, I saw that the cable had got off of the pulleys.

Q. How many pulleys had it got off on that Saturday, can you step down and show?

A. Off in about this position (illustrating).

Q. At the time that you first got there?

Mr. STANLEY.—The witness shows that it was entirely off the [116—49] block of eight and extending across the top of the makai pulleys to about a position of the center of the makai pulleys on the Ewa side.

Mr. DOUTHITT.—Was the cable running or moving or had it stopped when you got there,—when you first got there?

A. Still moving.

Q. Now, when you first saw the cable it was in the condition which you have described; what did that cable do as you stood there and watched it?

(Testimony of James Akina.)

A. Well, one of the boys standing in this position here (illustrating) at the edge of that plank and when I noticed the cable being off that way and with a jumping motion, I grabbed hold of the boy and shoved him back and at the same time made a motion to someone forward there to stop the engine.

Q. Did the cable—now, while you were standing there looking at that, did that cable come off any more of the pulleys than it was when you first observed it; did it subsequently come off any more of the pulleys?

A. Well, no, we started—I turned around and told the boys to go down below and lift the weight.

Q. It was off all of these pulleys, as I understand it, or around there. Be careful and do it just exactly as you saw it, take your time, don't be rushed about it, there is all the time in the world.

(Witness places cord on model representing cable.)

Mr. STANLEY.—Illustrating with the cable off the first eight pulleys on the Ewa side and extending along the top of the pulleys, extending almost to the center of the other side of the pulleys.

Mr. DOUTHITT.—Was it inside the pulleys that you have described on that occasion, Akina?

A. Just as I have placed [117—50] it.

Q. Then when you saw the condition of the cable being off all of those pulleys what did you do?

A. We went down below and lifted the weight up.

Q. When you came back after lifting the weight, what was the condition of the cable? After coming

(Testimony of James Akina.)

back, now, after you lifted the weight, did you see any change in the condition of the cable?

A. The wire was slack.

Q. Now, when you lifted the box or lifted the weight—when you lifted this, the weight which is represented on the coal-conveyor model, did you or did you not get any slack at the weight? A. Yes.

Q. Now, when you got back here after lifting the weight you say for that slack, what did you do?

A. Well, we picked the cable up and replaced it.

Q. Did you come back to the weight after replacing the cable? A. Yes.

Q. Where was the slack at the weight when you came back there after replacing that cable?

A. The slack was still there.

Q. Do you know where you got the slack at the makai end to put the cable back in its proper position on the pulleys if you didn't get it from the weight?

Objected to.

Q. Where did you get the slack from if you know to put back the cable to its position around the pulleys?

Objected to. Objection overruled. Exception. Exception allowed.

A. Well, my idea at the time the machinery was stopping, the cars still being moving, the machinery being stopped all of a sudden the momentum of the cars moved that slack forward. [118—51]

Mr. STANLEY.—I object to the answer and ask

(Testimony of James Akina.)

that it be stricken as the opinion and conclusion of the witness.

The COURT.—The motion is granted.

Mr. DOUTHITT.—With your experience of five years working on that coal-conveyor, three years of which you were working as a luna as you have testified over a gang of men, I will ask you whether you know where you got that slack from to replace the cable on the Saturday immediately prior to that accident?

A. I got the slack from the cars as they kept on going after the machinery had stopped.

Q. About how many cars were there on the track at that time?

A. Well, there were several cars there at the time, some mauka of the scale-house, others makai of the scale-house on the Waikiki track.

Q. Were there any cars on the Ewa track?

A. This tower at that time was near the makai end, and the car to my recollection was about fifteen feet mauka of the makai end.

Q. Do you remember how far the tower was back, —was mauka of the end? I will take, for example, this stanchion or post, how far mauka of that the first tower was on the Saturday immediately prior to the time that Ward was hurt?

A. Fifteen feet mauka of the end of this conveyor as indicated would be about the middle of the tower.

Q. And where were the cars with respect to the tower as to whether they were mauka of the tower or makai of the tower? A. Mauka of the tower.

(Testimony of James Akina.)

Q. Now, after you had lifted the weight or lowered the weight on that Saturday, did you have occasion to observe the running of the cable at the makai end?

The COURT.—State the width of the tower; referring to [119—52] width as along the track as it travels?

A. Along about twenty feet more or less.

Mr. DOUTHITT.—That is from this point to this point on the model, calling your attention to the points which run on the tracks here?

A. It may be twenty feet or more.

Q. Well, now, with respect to the entrance, the immediate beginning of the first pulley, have reference to the makai end of the coal-conveyor, where was this tower,—that is, where was this portion, the extreme makai end of the tower, can you place that, about how *how* far from this first pulley?

(Witness places tower on model.)

Q. And the cars as I understand you were on the Ewa track or behind the tower?

A. Along here (indicating on model).

Q. Getting back to the makai end of the tower, I will ask you, Mr. Akina, after you had lowered the box or the weight and the machinery had been started and the cable was going around its position, around on the coal-conveyor, did yiu have any occasion to observe how this cable was running at the makai end around those pulleys? A. Yes.

Q. Now, will you describe to that jury what you saw there and why you were there?

A. Well, the wire had slipped off the pulleys at

(Testimony of James Akina.)

that point and after replacing it the machinery was started and I came back there to try to find out the cause why that cable slipped off the pulleys at that point.

Q. And what did you find out?

Objected to as calling for the conclusion of the witness.

Mr. DOUTHITT.—I will reframe the question. What did you then observe?

A. I came there and watched the cable as it went around and I noticed the cable at that point slip and keep going up and down around the pulleys. [120—53]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, 1914, Term.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

Wednesday, May 27th, 1914.

Direct examination of JAMES AKINA, resumed.

Mr. DOUTHITT.—Mr. Akina, how many coal-cars were in use on the coal-conveyor of the Inter-Island Steam Navigation Company at the time of the accident to Mr. George Ward? A. Twenty.

Q. Do you know what the carrying capacity of

(Testimony of James Akina.)

those coal-cars is?

Objected to as incompetent, irrelevant and immaterial and having no bearing on this case.

The COURT.—What is the purpose of this?

Mr. DOUTHITT.—If your Honor please, it has been testified here that the slack was obtained by the momentum of the cars on the Saturday immediately prior to the accident so that there was no necessity for lifting the weight on the box because the slack [121—54] was still there.

Objection overruled. Exception. Exception allowed.

A. Each car carries about two tons.

Q. And what is the weight of the car?

A. Well, I don't know the exact weight of the car from my attention to the running of the scale, but what has been told me and what I know is that each car carries as much as two tons and sometimes three tons.

Q. You mean the car and the coal would weigh three tons?

Objected to as leading. Objection sustained.

Q. What do you mean by the three tons that you have said they would sometimes weigh?

A. That is the weight of the car and the coal, three tons. Sometimes two tons and over, and sometimes as much as three.

Q. On the Saturday immediately prior to the accident to the plaintiff in this case, how many cars—loaded cars were there between the two towers?

A. Two were filled with coal.

(Testimony of James Akina.)

Q. Will you please designate upon some position on the model the position of those two cars loaded with coal as you have described?

A. That tower should be a little further this way.

Q. Move it to the point where you think it ought to be.

A. (Witness moves tower on model.) The coal-cars would be about here (indicating). There was one car under the mauka tower being filled at one time.

Q. There was one tower under the mauka tower being filled with coal immediately prior to the cable coming off Saturday, prior to the accident, and there were two cars, as I understand you, between the mauka tower and makai tower on the Waikiki track, is that correct? A. Yes.

Q. How many empty cars were on the Ewa track? [122—55] A. About six cars.

Q. How many cars were going around the Waikiki track towards the coal-yard?

A. About eleven.

Q. Were those cars loaded or unloaded?

A. Part of them were filled and part empty.

Mr. STANLEY.—On the Waikiki side?

A. Some were on the Waikiki track and some were on the Ewa track.

Mr. DOUTHITT.—Do you know how many full cars were traveling around on the Waikiki track to the coal-yard awaiting the process of being dumped, —traveling along to be dumped, at the time immed-

(Testimony of James Akina.)

imately prior to the time that the cable slipped off on Saturday?

A. Well, the cars were not close to each other, there was fifteen feet more or less between each car as they started to go towards the coal-yard. It is my recollection that there were five or six loaded cars started on towards the coal-yard at the time on the Waikiki track.

Q. When the cars are in motion and when the engine is suddenly shut down, what do the cars do, if anything? A. They continue to move.

Q. About how far?

A. Between seven and eight feet.

Q. Who was the one who adjusted—who ungripped the cars when they arrived at the scale-house for the purpose of being weighed, and who attached the cars to the hauling cable when finished with weighing when they were on their way to the coal-yard? A. Jimmie.

Q. Who is Jimmie? A. Jimmie Akina, my son.

Q. Is he still working there? A. Yes.

Q. Do you know, Mr. Akina, with what does he raise the cable, if with anything, or did he raise the cable? A. A hook.

Q. Do you know how far that cable while in use and operation [123—56] was capable of being raised by means of the hook by hand at that point?

Mr. STANLEY.—We object to that as irrelevant, immaterial and incompetent and having no bearing on the case.

Mr. DOUTHITT.—We want to show that there

(Testimony of James Akina.)

always had to be slack in the cable itself, that it can be raised by hand, and it is testified here that it can be put back by hand.

Objection withdrawn.

(Last question read.)

Mr. DOUTHITT.—At the scale-house.

A. Sometimes lift it up two feet, two and a half, to four feet.

Q. And how old was your son? A. Eighteen.

Q. That is, you mean that it is capable of being raised all the way from two feet to four feet while the cable is being run?

Objected to as leading.

Q. What do you mean by that?

A. While the cable was still running.

Q. Well, running, what do you mean by running; you mean that there were any—with respect to cars, loaded cars, what do you mean by running?

A. The cable was in use sometime when the cars were loaded and sometimes when the cars were unloaded.

Q. I will ask you if it was possible to raise the cable two feet while the cable was in use and loaded cars were attached to the case? A. Yes.

Q. And on this particular cable I am referring to. Now, Mr. Akina, will you step down here and explain by the use of this model the different sheaves on which this cable is passed in its way around the coal-conveyor, the pulleys, sheaves, [124—57] drums? We will take this on the Waikiki side, the cable coming down, which way was the cable

(Testimony of James Akina.)

running on the Saturday immediately prior to the accident? A. Running mauka.

Q. Running mauka; that is in what direction in respect to the coal-yard?

A. Running mauka and then Waikiki towards the coal-yard.

Q. Now, as it came down running mauka and reached a position just makai—reached a position mauka of the scale-house there, through what does or did that cable pass?

A. It goes through a pulley there and then down to the engine-room.

Q. It goes through this pulley at the point marked

B. It passes down through the floor of the coal-conveyor over the pulley marked B? A. Yes.

Q. Going from the point marked B as I understand you, it passes over this sheave or pulley down to what point?

Mr. DOUTHITT.—I am referring to the main hauling cable over the sheave marked B. Now, from that point where did the cable go?

A. It comes down to this drum here and coils around it four times.

Q. Comes down to the drum and is wrapped or coiled around four times. What is the purpose of coiling or wrapping it around the drum four times?

A. So that when the cable is pulling the loaded cars it won't slip.

Q. After passing around the drum four times where does it go? A. Here (indicating).

Q. It passes from the drum to the first mauka

(Testimony of James Akina.)

pulley above the weight on the model. Then where does it go?

A. Down again, through the pulley of the weight.
[125—58]

Q. And up through where?

A. Up to the makai pulley above the weight.

Q. Then where?

A. Goes up through the pulley a little below the floor of the conveyor.

Q. Then where does it go?

A. It runs from there in the regular groove around the coal-yard.

Q. This model only represents, as I understand, Mr. Akina, the coal-conveyor as it was on the wharf, not the coal-yard or the other portions of the coal-conveyor? A. Yes.

Q. When the cable was in operation on the coal-conveyor, I will ask you, Mr. Akina, whether there was any slack so far as these cables, both cables, were concerned?

Objected to as already asked and answered.

Mr. DOUTHITT.—It may be contended that while there was slack at this particular portion of the coal-conveyor, at the scale-house, there may be some question as to there being slack at another portion of the coal-conveyor and I want to show that there was slack at other portions of the conveyor.

Mr. STANLEY.—The objection is withdrawn.

A. Yes, sir.

Mr. DOUTHITT.—Now, Mr. Akina, coming back to the weight, you say that on the Saturday imme-

(Testimony of James Akina.)

diately prior to the Monday when the plaintiff was hurt in this case, that the box was raised?

A. Yes, sir.

Q. Where did you get your slack at the time the box was raised?

Objected to as already asked and answered.

The COURT.—At what time?

Mr. DOUTHITT.—On the Saturday.

Objection overruled. Exception. Exception allowed. [126—59]

Mr. DOUTHITT.—When you raised the weight at the box where did you get that slack, the slack caused by the raising of the weight, where did you get it, where was the slack?

A. When we lifted the weight there was a slack at the box and we thought that was on account of the cable having sprung from the pulleys, and we went up there thinking to pull the cable back and get that slack that was in the weight there back on the pulleys, but when we got on top of the conveyor the slack was still there, the slack where the cable had got off the pulleys, and we replaced that and came back and still found the slack at the weight.

Mr. STANLEY.—I ask to have that portion stricken out as to what his thoughts were.

Mr. DOUTHITT.—Let the thought go out, if your Honor please, we don't want that. We want the rest of it in.

The COURT.—The portion as to what the witness thought and what other people thought may go out. The motion is granted as to the portion in which the

(Testimony of James Akina.)

witness expresses the thoughts of himself and others.

Mr. DOUTHITT.—The rest of the answer may stand, your Honor?

The COURT.—The rest of the answer may stand. What he actually observed is responsive to the question.

Mr. DOUTHITT.—Mr. Akina, I will ask you if by raising the weight as you did on the day, the Saturday immediately prior to the accident, whether by the mere operation of raising the weight that would give you any slack at the makai end of the coal-conveyor? A. No.

Q. In order to get the slack occurring at the weight when raised, in order to get the slack at the makai end of the coal-conveyor, in order to use that slack at the box, how would you get it over to the makai end?

A. You would have to [127—60] pull the slack in the box to get it to the makai end of the conveyor. We would have to keep pulling that slack up towards mauka on the Waikiki side of the conveyor until that slack was finally drawn around on the Ewa track around to the makai end of the conveyor.

Q. Why could it not be taken, if you know, and pulled immediately makai instead of going around the whole conveyor?

A. The reason is, the cable here on the Waikiki track goes up mauka and goes down to the engine-room and is wound around the drum and the slack is over here at the weight, and that slack we cannot

(Testimony of James Akina.)

get that to run makai, but it has to follow the course of the cable as it goes up and runs along the track.

Cross-examination of JAMES AKINA.

Mr. STANLEY.—Mr. Akina, you say that you went to work for the Inter-Island Company about five years before Mr. Ward's accident, is that right?

A. Yes.

Q. And at that time you were working under Ward during the course of the erection of the coal-conveyor? A. Yes.

Q. And what part of the coal-conveyor—what part did you take in the erection of the coal-conveyor?

A. Well, whatever he ordered me to do.

Q. Well, were you busy erecting the woodwork or the machinery?

Mr. DOUTHITT.—I desire to ask one question more.

Q. Mr. Akina, at the time that George Ward was hurt, and at the time the new drum was put in, which was, as you have [128—61] testified, about a month before the accident, I will ask you whether or not the Inter-Island Steam Navigation Company had a spare cable which could have been installed, a new or spare cable? A. Yes, sir.

Mr. STANLEY.—Well, were you busy erecting the woodwork or the machinery?

A. Well, the steel work and iron.

Q. Including the rails there? A. Yes.

Q. The pulley work? A. Yes.

Q. And the towers generally? A. Yes.

(Testimony of James Akina.)

Q. And you and Mr. Ward were working around the makai end of the conveyor installing the machinery there? A. Yes.

Q. And when was that conveyor built?

A. I don't remember the time.

Q. About how many years ago?

A. Six or seven years.

Q. Now, you say afterward you were a luna on the coal-conveyor; what exactly do you mean by that?

A. Well, I was ordered to take charge of the conveyor there and see that the men worked properly on the conveyor subject to Mr. Gedge's orders.

Q. And was that your position at all times after you got through with the erection of the conveyor and up to the time that Ward was hurt?

A. Yes.

Q. Is it not a fact, Mr. Akina, that you were working under Mr. Ward at times after the coal-conveyor had been erected and up to the time that Ward was hurt? A. No.

Q. Is it not a fact, Mr. Akina, that it was only while the Inter-Island were loading its own boats, the Inter-Island boats, that you had charge of the conveyor, and that when foreign ships came in bringing coal that had to be unloaded that Mr. Ward was in charge of the conveyor?

A. Yes, sir. [129—62]

Q. So that it is true then, is it, that whenever foreign ships came in, or coal ships came in to discharge coal there Mr. Ward was in charge of the conveyor and you were under him?

(Testimony of James Akina.)

A. Well, some things, because when foreign coal bottoms were alongside the dock there I would have charge of the conveyor and Mr. Ward be down on the ship and I would attend to the running of the conveyor and if there was anything out of order that I could not repair, then I would give orders for Mr. Ward to come up and do it.

Q. You would give orders to Mr. Ward, is that true? A. In some things.

Q. Then Mr. Ward was under you, was he, so far as the repair of the conveyor was concerned?

A. Well, he was ahead, above me.

Q. Now, do you want us to understand that Mr. Ward's duty was to tally coal coming out of the vessels, that was his ordinary duty, and yours it was to look after the running of this conveyor?

A. Yes, I was luna on the coal-conveyor.

Q. And Mr. Ward's main duty was to tally coal on the vessel, is that true?

A. Well, not only to look out for coal that was coming out of the ship, but to come and look over the conveyor, generally.

Q. Not only tallying coal, but he had the oversight and supervision of the coal-conveyor? A. Yes.

Q. He was, was he not, the chief superintendent of that coal-conveyor? A. Yes.

Q. That was the language you used, was it not, when you were testifying on the last case?

Objected to.

The COURT.—Is it for the purpose of impeachment? [130—63]

(Testimony of James Akina.)

Mr. STANLEY.—No, your Honor.

The COURT.—Objection sustained.

Mr. STANLEY.—What, exactly, did you mean by saying that Mr. Ward was chief superintendent on the coal-conveyor?

A. The officers of the company would give him orders and he would give orders to me and I had to carry it out because he had more authority than I had.

Q. And whenever anything went wrong with the conveyor while they were unloading these foreign ships, it was Ward who attended to the repairing?

A. Yes.

Q. And before you joined the Inter-Island service what was your profession, Mr. Akina?

A. Running a pump.

Q. Now, when was it that you first observed the poor condition of the cable that was in operation at the time that Ward was hurt?

A. The month after a coal vessel had come in?

Mr. DOUTHITT.—No.

The INTERPRETER.—That is the way I understood it.

A. Yes, one month after the coal vessel had come in.

Mr. STANLEY.—What coal vessel are you referring to?

A. The coal vessel that was unloading or was being unloaded when George Ward met his injuries and had the accident.

Q. Well, I suppose you really mean—I don't want

(Testimony of James Akina.)

to mislead you or take advantage of you. You really mean after Ward was hurt, a month after, while that coal vessel was in, a month after you first observed the condition of the coal-conveyor, is that it?

A. I mean the reverse of the last statement.

Q. You meant a month before?

A. I had seen it a month previous to the coal vessel coming in.

Q. Now, what was the condition of this cable at that time? [131—64]

A. The wires had come out and stuck out like burrs.

Q. The wires had come out of the cable and were sticking out like burrs, is that it? A. Yes.

Q. And was that the condition of the cable throughout its entire length? A. Yes.

Q. And these wires at that time were sticking out anywhere from one-sixteenth of an inch to an inch?

A. Well, these wires were sticking out at that time and gradually kept getting worse, more of them coming out as we kept on using the cable.

Q. But at the time that you first observed it, a month before Ward was hurt, they were sticking out from a sixteenth to a half an inch or an inch all around this cable? A. Yes.

Q. Now, were they sticking out perpendicularly or horizontally, or how,—on a line with the main bit of cable, or sticking out at right angles to it, or how?

A. They were sticking out in all directions.

Q. And this was a condition, was it, that was

(Testimony of James Akina.)

plainly observable? A. Yes.

Q. Then having noticed that, what did you do?

A. Well, the cable, on account of this condition, kept getting tangled around the drum, so I telephoned down to Mr. Gedge.

Q. Why did you telephone to Mr. Gedge?

A. Well, the cable was getting bad and getting tangled up.

Q. Do you remember what time of the day it was that you telephoned to Mr. Gedge?

A. It was in the morning, somewhere around nine o'clock.

Q. Had you seen Mr. Gedge before that morning?

A. No.

Q. Is it not a fact that Mr. Gedge gets down there to the coal-conveyor the first thing in the morning when you get to work, and is there on and off through the day five or six times? [132—65]

A. That is true enough when there is a coal vessel in port.

Q. But not otherwise?

A. Some other times he would come in two or three days a week.

Q. Well, you telephoned to Mr. Gedge, and what did Mr. Gedge say? Tell us first of all, what did you say to Mr. Gedge, and tell us in English. I will ask you, what language did you speak to Mr. Gedge in?

A. In English.

Q. Now, tell us in English what you said to him?

A. I told Mr. Gedge about fixing the wires creeping on the drum.

(Testimony of James Akina.)

Q. What else did you say?

A. I told him about the wire.

Q. Tell me what you said to him.

A. I told him about the wire, is bad wire.

Q. What?

A. I told him the wire is bad, is creeping on the drum.

Q. Yes, anything else?

A. And Gedge told me to—that he would go down and get George Ward and—Mr. Gedge told me to go down to the shop and get George Ward to come up and size up the cable.

Q. That is what Mr. Gedge told you, that he was going to go and get Mr. Ward to size up the cable?

A. Yes.

Q. Was anything else said?

A. Mr. Gedge and Mr. Ward came up that morning.

Q. When you telephoned, was anything else said between you and Mr. Gedge?

A. Yes, I told Mr. Gedge to take that wire off.

Q. What?

A. I told Mr. Gedge that morning to take that wire off.

Q. And you told him this over the telephone?

A. What?

Q. And you told him this over the telephone?

A. No, I telephoned to him to come up. [133—66]

Q. And Mr. Gedge telephoned back to you saying that he would get Ward to come down and size up the cable, is that right?

(Testimony of James Akina.)

A. When I telephoned to Mr. Gedge he came up. He came up alone that time.

Q. I am asking you what Mr. Gedge said to you over the telephone.

A. Well, I telephoned to him and he said he would come up, and he came up.

Q. Did he tell you then that he would get Mr. Ward to come with him? A. No.

Q. He just said he would come? A. Yes.

Q. Now, when did Mr. Gedge come there?

A. Shortly after the telephone.

Q. And was he accompanied by anybody, or did he come alone? A. He was alone.

Q. And did you have a talk with him, then?

A. Yes.

Q. And who was present during that talk?

A. Mr. Gedge and myself.

Q. Mr. Gedge and yourself; and where did the conversation take place? A. In the engine-room.

Q. Now, will you tell us what you said to Mr. Gedge on that occasion, and please tell us in English?

A. I told Mr. Gedge about the wire is pretty bad, and Mr. Gedge told me that he is going down to take George Ward and come up and look at the cable.

Q. Is that all?

A. And Mr. Ward and Mr. Gedge came up that morning.

Q. I am just asking you about your talk with Mr. Gedge alone in the power-house; did anything more pass between you and Mr. Gedge except what you told me?

(Testimony of James Akina.)

A. Well, I told him about the cable there being in a poor condition and told him I thought better to have the cable changed and have a good one [134—67] put in.

Q. Did you say anything to him about the drum?

A. Yes. Well, I told him that the drum itself was wearing out and was sagging down and I told him they could change the cable,—when we had a new one put in, might as well have a new drum put in also.

Q. Your idea was that the thing that wanted attention first was the cable, and when you were putting in the new cable you might as well put in a new drum, is that it? A. Yes.

Q. Didn't you testify on the last trial that in your opinion that the real cause of trouble was the machinery there, the drum and not the cable?

A. I told him both about the machinery and the drum, as well as the cable, the bad condition of the cable.

Q. Well, didn't you tell him, as a matter of fact, that the drum was in bad condition, and that it was putting the cable in bad condition?

A. I told him that the wire was in bad condition and was being tangled up all time, and that the drum was sagging; every time we used it, it got worse and worse.

Q. And that the condition of the wire,—of the cable was caused by the poor condition of the drum?

A. I did tell him it was on account of the condition of the drum and the cable crossing over each other.

(Testimony of James Akina.)

Q. What is that? A. Cable crossing over itself.

Q. On the drum? A. Yes.

Q. Now, then, you say, Mr. Gedge went away and brought Mr. Ward down, is that right? A. Yes.

Q. And were you present at the conversation that took place between Mr. Ward and Mr. Gedge?

A. Yes.

Q. And where did that take place?

A. In the engine-room. [135—68]

Q. The three of you being present during the conversation? A. Yes.

Q. Now, state what occurred?

A. Mr. Ward, after looking over the machinery and the cable told Mr. Gedge that he thought it advisable to remove the cable and have it replaced with a new one and have the drum also replaced at the same time so as to avoid any further trouble in the future.

Q. Did he say what kind of trouble might be caused if the drum was not replaced?

A. Well, I don't know; that is all I heard.

Q. Well, were you present during the whole conversation?

A. Well, I heard Ward telling Mr. Gedge to have that drum taken out and put a new one in.

Q. Heard Mr. Gedge tell Mr. Ward that?

A. No, I heard Mr. Ward tell him that.

Q. What else did Mr. Ward tell Mr. Gedge besides taking out the drum and having a new one put in?

A. Well, after Mr. Ward had suggested the change Mr. Gedge turned around and said, "No, take the drum out and put a new one in. The cable is all

(Testimony of James Akina.)

right, leave it alone."

Q. And what did Mr. Ward say to that?

A. "Well, we will follow your instruction and take out the drum and replace it."

Q. That is all he said, I will just follow your instructions and put a new drum in? A. Yes.

Q. There was no discussion between you about it. As soon as Mr. Gedge says, "No, the cable is all right, put in a new drum," Mr. Ward says, "I will follow your instructions?"

A. Well, prior to that, Mr. Ward had already told Mr. Gedge that he thought that the cable as well as the drum should be replaced by good ones, and Mr. Gedge said, "No, leave that cable [136-69] alone, but remove that drum and put a new one in," that is when he made his answer to him, "We will follow your instruction."

Q. But as I understand it was just a suggestion made by Mr. Ward that a new cable should be put in and a new drum, and Gedge comes back and says, "The cable is all right, put in a new drum," and Mr. Ward said, "I will follow your instructions and put in a new drum," that is all? A. Yes.

Q. And this discussion—this conversation took place in the power-house where this condition, the rotten condition of this cable was plainly observable?

A. Yes.

Q. And you heard all that took place? A. Yes.

Q. Now, Mr. Akina, about this time, that you say you made the complaint, sometime towards the beginning of June, 1913, you knew, did you not, that a

(Testimony of James Akina.)

number of coal vessels were expected from abroad—1912?

A. Well, yes. Of course, whenever a coal vessel was expected, I would receive orders to get the conveyor in readiness.

Q. And you knew at this time that a number of vessels were expected shortly? A. Yes.

Q. And you say whenever coal vessels were expected, you received orders to see that everything was in proper running order? A. Yes.

Q. And by proper running order you mean that the cable was all right and the machinery in an efficient condition? A. Yes.

Q. And is it not a fact that before these coal vessels came in there was a general overhauling of the machinery down there, a general inspection of the cable and everything under Mr. Ward's supervision?

A. Well, I got orders two or three days before the vessel come in port, but George Ward, before the [137—70] vessel gets in would come down there and look over things.

Q. And these vessels that were expected, that you expected somewhere towards the beginning of June arrived, did they not, towards the end of June?

A. I don't remember the exact date.

Q. Well, let us try to look it up. How long had those vessels been in,—how long prior to this accident had the first of those vessels come in?

A. I don't remember.

Q. Perhaps we will get it in another way. Do you know whether or not George was hurt while the first

(Testimony of James Akina.)

of those vessels was in, or the second?

A. It is so long ago, and I had to pay attention to my own work, I cannot remember all.

Q. Then, perhaps, we will refresh your memory from the testimony on the direct examination. You said that one of these vessels took five and a half days to unload, and the second took six days; is that right?

A. Yes.

Q. And is it not a fact, Akina, that the second vessel—the unloading of the second vessel had not been finished at the time that Ward was hurt? A. Yes.

Q. And you testified, did you not, at the last trial, that the apparatus, the whole machinery there, was generally overhauled towards the end of June, 1912?

Mr. COKE.—We object to that; there is nothing in his testimony here that would impeach him. We submit that counsel has no right to rehearse his testimony in the last trial.

Objection sustained.

Mr. STANLEY.—Is it not a fact that just prior to the first of those vessels arriving that the machinery and the whole conveyor was generally overhauled? A. Yes.

Q. Did you not testify at the last trial that was towards [138—71] the end of June, 1912?

A. Well, that is the customary order to us, and we always receive that order shortly before a coal vessel was expected.

Q. And you know that that was done at this time?

A. Yes, and at all times.

Q. And it is a fact, is it not, that the overhauling

(Testimony of James Akina.)

and the superintendence of the overhauling of the conveyor at that time was done by Mr. Ward before the coal vessel arrived? A. Yes.

Q. And how shortly before the arrival of the first coal vessel was that general overhauling made?

A. Well, sometimes you will get the order two weeks, sometimes a month before the vessel is expected, and you cannot work every day, because the Inter-Island boats will be coming in for coal and we are attending to that, and when we are not busy we are getting the conveyor ready to receive the coal from the foreign bottoms.

Q. And how long did this overhauling last?

A. Sometimes it takes two weeks and sometimes we will not be through overhauling when the vessel arrives.

Q. In other words their overhauling is made when coal vessels are expected, is that right, and was made in this case? A. Yes.

Q. I understand you that before the coal ships arrive Mr. Gedge gives the order that this general overhauling should be done? A. Yes.

Q. Now, you stated that Mr. Gedge agreed about a month previous to Mr. Ward's accident that a new drum should be put in; was such a new drum installed? A. Yes, sir.

Q. And how long after this conversation that you have testified took place in the power-house or engine-house? A. The same day.

Q. The very same day, and do you remember the date that was? [139—72] A. No.

Q. You were in the habit were you not of making

(Testimony of James Akina.)

reports to the Inter-Island office of the particular work down from day to day? A. Yes.

Q. These reports were made in English, were they not? A. Yes.

Q. I will ask you to examine this paper I hand reports? A. Yes.

you, and state whether or not that is one of your

Q. Now, will you examine that and state whether or not after examining it you have refreshed your recollection as to the time that this drum was put in?

A. The 6th of June.

Q. The report so states? A. Yes.

Q. The new drum was put in, now, that you have refreshed your recollection, on the 6th of June, 1912?

A. Yes.

Q. Now, you testified, Mr. Akina, that all the time right up from that date, June 6th, up to the time that Ward was hurt, the cable was visibly becoming worse and worse, is that right? A. Yes.

Q. And at the time that you spoke to Mr. Gedge on this 6th of June, the conveyor was being operated merely for the purpose of loading Inter-Island boats? A. Yes.

Q. And was working an hour or so a day?

A. Sometimes three or four hours, sometimes an hour, it depends on how many steamers were alongside the conveyor.

Q. And working a comparatively short time as compared with the work when the coal vessel is in?

A. Yes.

Q. Now, Mr. Akina, is it not a fact that with this

(Testimony of James Akina.)

cable, poor as you say it was, the Inter-Island did better work than with any other cable it previously had? Is it not a fact that the Inter-Island with this cable did better work than with any other cable you ever had? [140—73]

A. Well, this cable I am just speaking of had been used for some months, but as to the number of cables that had been used, and used before that time, I don't remember.

Q. Didn't you testify in the last trial that this cable had done better work up to the time that Ward was hurt than any cable you had ever had before; that is you had taken out more coal with it in a given space of time than you had ever done before?

A. Yes, sir.

Q. The object of this overhauling of the machinery, Mr. Akina, is to see that while coal vessels are in the work will proceed steadily and without any interruption on account of a bad cable or anything else?

Objected to. Objection overruled.

A. Yes, sir.

Q. The object being to have these vessels unloaded as quickly as possible? A. Yes.

Q. And with a view to the proper running of the conveyor a spare cable was kept on the dock, a new cable ready for use at all times necessary?

A. Yes.

Q. Now, about this—on this Saturday before George—before the accident to Ward, where were you at the time the cable came off the pulleys?

(Testimony of James Akina.)

A. I was in the scale-house.

Q. And how long had you been there before the cable came off. A. Ten or fifteen minutes.

Q. What were you doing there?

A. I come from mauka and had come and got to the scale-house and was watching the cars as they went past.

Q. Did you count the cars as they went past?

A. No, not at that time, after the cars were stationary and we went down, then I noticed them.

[141—74]

Q. While you were at the scale-house were you counting the loaded cars as they went past?

A. No.

Q. And what was the first thing you heard of the cable being off while you were at the scale-house?

A. Well, I saw the men at the makai end here putting up their hands and beckoning me to come down.

Q. Did they say anything or shout out anything?

A. They called out but I was so far mauka I could not hear.

Q. And you were at a distance of several hundred feet away from the makai end of the conveyor?

A. Yes, sir.

Q. And what did you do then?

A. I came makai.

Q. Was the cable still running? A. Yes.

Q. And when you got there you found that the cable was off the trolley,—pulleys?

A. The cable was off from the pulleys and was keeping coming off, getting off more pulleys.

(Testimony of James Akina.)

Q. But the cable was still running?

A. Yes, sir.

Q. Now, is it not a fact, Mr. Akina, that whenever the cable comes off the pulleys that the engine is immediately stopped? A. Yes.

Q. And it is immediately stopped, is it not, so that it won't come off any more pulleys?

A. So that the cable won't come off any more pulleys, yes.

Q. And the men at the towers have instructions, have they not, whenever the cable comes off to immediately give the signal for the engine to be stopped?

A. Well, that is if they see it they go out and stop the machinery themselves or give the signal. In this instance they saw me to give the signal.

Q. But as a usual thing—the usual thing is the moment [142—75] the cable comes off the pulleys to give the signal to stop the engine so that the cable don't come off any more pulleys? A. Yes.

Q. And a boy is stationed at the scale-house not only for the purpose of switching the cars from one part of the cable to the other, but also for the purpose of twisting or turning this attachment of the throttle which stops the engine? A. Yes.

Q. But on this particular Saturday they—the men here who saw the cable come off did not give the order for the signal for the engine to stop but allowed it to run and come off more pulleys until you got up there, is that right?

A. Well, one of the boys down here, one of the trackmen, as soon as the one down here beckoned out

(Testimony of James Akina.)

to me I started to run makai, and as I come down I noticed the cable coming off more pulleys and I grabbed hold of the boy who was in danger zone and shoved and pushed him to one side mauka.

Q. What boy was that that you pushed out of the danger zone? A. Nunu.

Q. Come and show us where Nunu was in this danger zone? A. Kale, his name is Nunu.

Q. That is a man known by various names among the men, one name Nunu, another Kolei. So the men called him Kolei, didn't they?

A. We called him Kolei because he is hard of hearing, but his name is Nunu.

Q. Now, you say that you got down here and found Nunu, or Kolei, in the danger zone; whereabouts was it?

A. Well, he was standing about there (indicating on model).

Mr. STANLEY.—We will mark this C.

Q. That is approximately at the spot marked C on one of the planks at the makai end of the coal-conveyor?

A. He was standing in that position and I noticed the cable coming off the pulleys on the Ewa side and was getting off more [143—76] pulleys when I grabbed hold of him and shoved him mauka.

Q. Who else was down there besides Nunu?

A. Well, the other boys were not makai here they were under the hopper. Nunu was stationed in that position to stop the car as it came in that position

(Testimony of James Akina.)

so that it would go slowly and get under the hopper.

Q. And when you heard this shouting and did not understand what it was—where is the man, still working under the towers? A. Yes.

Q. Nunu is a man, is he, now, who had worked for a considerable time down at the conveyor previous to this Saturday? A. Yes.

Q. Do you know why it was that on this particular occasion when the cable came off the pulleys that the engine was not immediately stopped?

A. Well, when I got down there I saw the cable had started to come off the rest of the pulleys there and I grabbed hold of Nunu and shoved him off and at the same time I gave a motion to stop the engine.

Q. Do you know why it was that after it came off and Nunu was here and you were down at the scale-house that the order was not immediately given to stop the engine?

Objected to. Objection withdrawn.

A. Well, they had been accustomed to that, whenever they saw me they would first call me to the scene of the trouble; whenever I am away they can give the signal direct themselves.

Q. So that you mean if you were away down one-eighth of a mile on this conveyor and they saw you, they would wait until you came up and would not stop the engine?

A. If I was that distance off from that conveyor they would not be able to see me.

Q. But if they could see you then you say the custom is— [44—77] if they could see you to let

(Testimony of James Akina.)

it go off as many pulleys as it liked until you got there and gave the order to stop the engine?

A. Well, I had given them instructions whenever I was near, within call, to call me, and in this instance I was near where they could see and call me. Sometimes I am in the coal-yard and when anything should happen all they have to do is to stop the machinery without waiting for me.

Q. You knew, did you not, that the way to stop—if you stop the engine the cable would stop coming off the pulleys, wouldn't it?

A. Well, your Honor, when I was down there the cable was still coming off the pulleys, how many pulleys it came off I don't know because I immediately turned around—

Mr. STANLEY.—I am not talking about that. You know, as a matter of fact, do you not, that if *your* stop the engine and the cable is off the pulleys, it will stop coming off any more?

A. Well, I didn't watch it that time when I came down, the cars were still running and cable in operation.

Q. When was it that you gave instructions that if the cable came off the pulleys and you were in sight that they should allow the cable to still run until you could give the order to stop the engine?

Mr. DOUTHITT.—That is not a correct statement of the testimony at all, if your Honor please.

Mr. STANLEY.—When was it that you gave the instructions that if you were in sight the men should not do anything in connection with the cable until

(Testimony of James Akina.)

you had a chance to be called to give the orders?

A. My instructions were at all times whenever anything happens—when anything happens when I am not around, to stop the machinery the first thing.

Q. And did you say if I am around and in sight don't stop it? [145—78] A. No.

A. No.

Q. Then can you explain why in this case the men who were right down here when it came off did not have the engine stopped?

A. It just happened that they saw me standing up there and they called for me to come down.

Q. And let the cable still continue to roll off these pulleys until you could walk down from the scale-house down makai there?

A. I did not walk down, I run down just as fast as I could.

Q. All right, but they were allowed to still come off while you were running down?

A. It didn't take me very long to get down there.

Q. Now, when you got down there and saw it where it was placed yesterday on top of a number of these pulleys at the extreme makai end, I think, starting at the first one of the set of sixty and extending almost to the extreme makai portion of the conveyor?

A. I told the men to go down there and lift the weight up and get the slack in the box.

Q. And they did it? A. Yes, sir.

(Testimony of James Akina.)

Q. Now, will you tell the jury why you wanted the weight raised?

A. The idea was to have the weight lifted up so as to get the slack there, then come back on the conveyor down here and if there was not sufficient slack to replace the cable on, to go up there and keep pulling the slack from the box and around and down that way to the makai end where the cable had come off the pulleys to get the slack.

Q. The first thing when the cable gets off you raise that weight to get the slack, is that it?

A. Yes, sir.

Q. And how do you get the slack; does the slack go into the box or is it distributed around the conveyor?

A. The slack is still at the weight. [146—79]

Q. So I understand your testimony that the slack is down in this box and lays there and is not distributed at all around there unless you go around personally and pull it every few feet or so until you get to the makai end? A. Yes.

Q. When the cable is in operation, Mr. Akina, it is a fact, is it not, that it runs fairly taut and has to run fairly taut right along the track and around the pulleys?

A. Well, there is sufficient slack there.

Q. Yes, but has it not to be of sufficient tautness in order to pull on the cars? A. Yes.

Q. Is it not also a fact, Mr. Akina, that once you raise that weight—you stop the engine and raise that weight you can immediately see the cable sag-

(Testimony of James Akina.)

ging onto the track between the little rollers?

A. Well, I never paid any attention to that. Every time there is anything happened of that sort the first thing is to lift the weight and get the slack and if not enough slack go back and try to get enough slack and pull it around where it is needed.

Q. You never paid any attention whether the cable immediately sags on the floor, on the ties, when the weight is raised?

A. Our attention is generally called to where the seat of the trouble is.

Q. And on this occasion you say that you gave the order to have the weight raised and the weight being raised you came back and found enough slack here to put it back by hand? A. Yes.

Q. Now, you said that having got the cable running again, having lowered the weight again and got the cable running, you went up there and tried to find out what had caused the cable to come off, is that right? A. Yes.

Q. Well, just go back a minute. Before you stopped the engine, and having found the cable in the position you have described when it was off, that is on top of these pulleys, you say [147—80] that it was jumping up and down; what do you mean by that, jumping up and down from the top of the pulleys or what?

A. Running on the upper edge of the pulley.

Q. Well, do you mean on the side of the pulley or jumping up and down on the top of it?

A. On the outer edge.

(Testimony of James Akina.)

Q. Well, the outer edge is the place where it should be, should it not; that is where the cable should be, should it not, when it is in proper working order?

The COURT.—The outer edge of that battery of sixty pulleys.

Mr. STANLEY.—Yes, sir, that is before he says it was off.

A. It was slipping off the upper outer edge of the pulleys.

Q. Of what pulleys? You say it was slipping up off the upper outer edge of them?

A. I could not point out which particular pulleys, the cable kept getting off the upper edge, but it was getting off the upper edge of some of these pulleys when I turned about.

Q. Is it not a fact, Mr. Akina, that at the last trial of this case you did not testify to observing any such thing?

A. I was not questioned as to that.

Q. You were put on the stand as the witness of Mr. Ward by Mr. Douthitt, were you not?

A. Yes.

Q. And whether questioned or not you made no statement about seeing the pulleys—the cable having a tendency to raise off these pulleys?

Objected to as asked and answered. Objection overruled.

A. Well, my recollection is I was asked as to whether the cable came off or not and I said yes, the cable was off the pulleys. I don't remember being

(Testimony of James Akina.)

asked as to whether—what the cause was, what caused the cable to come off and I did not answer.

Q. Now, you have advanced the theory that the slack down at [148—81] the makai end at the time the cable came off Saturday was obtained by the momentum of the cars?

Mr. DOUTHITT.—He testified it was a fact, not a theory.

Mr. STANLEY.—Now, you say, Mr. Akina, that there was a loaded car—two loaded cars between the two towers, is that right, on this Saturday?

A. Yes.

Q. And there was another loading under another

Q. Now, is it not a fact that when you have a car tower, is that right? A. Yes.

loading here and loaded cars behind it, that those cars are not allowed to move until this car is out of the way?

A. Yes, sir, the cars makai of the mauka tower are filled with coal from this other tower and there is another car under the mauka tower being filled; these cars are run up to the car being filled and are blocked by that car being filled until that car moves on.

Q. Do you know whether or not the two loaded cars between the towers were moving on this Saturday?

A. They were standing near where the car was being loaded.

Q. And when the cars were standing and the cable is running, the grip has to be taken off to release

(Testimony of James Akina.)

them from the cable, has it not?

A. Well, the wire, the wire cable still continues to run through this groove in the hook and it is only when the wheel is turned around and loosens the grip.

Q. That is what we might call the shoe of the car, the cable still runs through the shoe of the car, but the grip fastening the cable into the shoe is unloosed? A. Yes, sir.

Q. That as far as those particular cars are concerned when the cable was stopped why they had no momentum at the time?

A. Well, those cars were standing still.

Q. They did not influence the slack or tautness of the cable at all?

A. No, they were standing still. [149—82]

Q. And there was one standing down under the tower in a similar condition, was there not, with the grip unloosed? A. Yes, sir.

Q. And makai of that—mauka of that, you say, there were other cars traveling. How many cars were there on this Waikiki track moving, moving cars? A. There were at least five loaded cars.

Q. How do you know that?

A. Well, they were almost in a line there, one after another, on their way to the coal-yard. As I glanced around there were about five going out that way loaded and the unloaded cars were returning on the opposite track.

Q. And when was it that you took notice of this

(Testimony of James Akina.)

and know that there five cars going towards the coal-yard?

A. There were less cars on this side and the six empty cars on the Ewa track and three cars on the Waikiki track, there was one car loaded that had just been through the scale-house and just moved away from the scale-house.

Q. And there were at least five loaded cars on this Waikiki side all traveling towards the coal-yard, is that it? A. That is my recollection.

Q. And so far as they were concerned, the effect of the momentum when the cable stopped was to drag the cable in a mauka direction?

A. Yes, sir.

Q. Away from this maiki end?

A. Yes, sir. Because the cable goes up to the point up there and goes down and then comes up again through the conveyor and runs in a Waikiki direction.

Q. Yes, but these five loaded cars that we are talking about that were on the way to the coal-conveyor were mauka of the scale-house and the place where you switch off from one section of the cable to another? A. Yes, sir. [150-83]

Q. And on the Waikiki-Ewa track you had a number of empty cars, where were they?

A. They were on the Ewa side coming down.

Q. Some of them were stationery, were they not?

A. They were all moving.

Q. How do you know?

A. They were constantly moving because if one

(Testimony of James Akina.)

car happened to stop it would start a blockade. They would have to keep moving.

Q. Is it not customary when you are loading a car to have the one behind it stop?

Mr. DOUTHITT.—Yes, but you are talking about the Ewa track?

Mr. STANLEY.—Yes, I am talking of the Ewa track.

A. Yes, sir.

Q. And you were loading cars on Saturday, were you not? A. Yes, sir.

Q. I think you testified, Mr. Akina, that when you were working on this coal-conveyor that you had eight men under you besides yourself, is that right?

A. Yes.

Q. And where were those men stationed?

A. When the coal ship was in or not?

Q. When a coal ship was not in?

A. Well, I didn't have eight men all the time. Sometimes I would only have four men, sometimes five, sometimes six besides myself. If I had five I would make the sixth.

Q. It all depended on whether a coal vessel was or was not in on the amount of work done?

A. I am supposed to have eight men at all times whether there is a coal ship in or not, but sometimes the men will lay off themselves and we are short-handed.

Q. And your regular complement is eight men? It is a fact, [151—84] is it not, that when a coal vessel comes in you employ in addition to those eight

(Testimony of James Akina.)

regular men about eight others? A. Yes, sir.

Q. And that is for work on the conveyor?

A. Yes.

Q. And you had such a number of extra men on the 8th of July, 1912? A. Yes.

Redirect Examination of JAMES AKINA.

Mr. DOUTHITT.—Who employed those eight men, those additional men?

A. Well, Mr. Gedge gave me the orders to pick out eight extra hands and put them to work on the conveyor.

Q. And who discharged the men if necessary?

A. I did.

Q. That is when the ship was finished you let them go? A. Yes.

Q. Now, who is the one who gave the general orders around there, the main orders, the general orders as to the conduct of the coal-conveyor?

Objected to as not proper redirect examination. Objection overruled. Exception. Exception allowed.

A. Mr. Gedge.

Q. You say that it sometimes took a couple of weeks to overhaul the coal-conveyor? A. Yes.

Q. Where was George Ward employed during the two weeks that you would overhaul the coal-conveyor? A. Down in the shop.

Q. Where are those shops?

A. The Inter-Island shops.

Q. Do you know where the Inter-Island shop is or was at that time?

(Testimony of James Akina.)

A. On River street. [152—85]

Q. River and what other street?

A. And Queen street.

Q. You say, Mr. Akina, that prior to going to work for the Inter-Island Steam Navigation Company, you ran a pump, what pump was that?

A. Ran a pump down to Waipahu for the plantation.

Q. For the Waipahu Sugar Company?

A. Yes, sir.

Q. What was the capacity of that pump?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. When you spoke of having given orders that when the cable was off the pulleys or anything happened and if you were in the immediate vicinity you should be called what do you mean; the cable off in what portion of that coal-conveyor; what did you mean by that?

A. Any part of the conveyor, I have to be right near there for them to call my attention to it. If I am not there for them to go right ahead and stop the machinery and attend to it.

Q. If anything was wrong, that is what you mean, is it not? A. Yes, sir.

Recross-examination of JAMES AKINA.

Mr. STANLEY.—Mr. Akina, what was the nature of these general orders given by Mr. Gedge?

A. Well, sometimes coal ships would come in and

(Testimony of James Akina.)

Mr. Gedge would give me orders to move the towers into position, and sometimes when I was not there he would give it to Mr. Ward and Mr. Ward would give to me when I would come.

Mr. DOUTHITT.—I move that that portion be stricken out [153—86] that Mr. Gedge would give orders to Mr. Ward and it would be given to him when he come.

The COURT.—That may be stricken out.

Mr. STANLEY.—What other orders did you ever get from Mr. Gedge?

A. Orders with reference to laborers.

Q. Well, what nature?

A. Instructions as to the setting of the different men.

Q. About the employment of the different men?

A. The employment and setting them in position.

Mr. DOUTHITT.—With regard to the conduct of the work who gave these instructions?

Objected to as not redirect examination. Objection sustained. [154—87]

[Testimony of George E. Ward, for Plaintiff
(Recalled).]

Direct Examination of GEORGE E. WARD,
Resumed.

Mr. DOUTHITT.—What is your full name?

A. George Edward Ward.

Q. And where were you born?

A. In Sutter Creek, Amador County.

Q. In the State of California?

(Testimony of George E. Ward.)

A. Yes, Sutter Creek, Amador County, California.

Q. How long have you lived in the Hawaiian Islands? A. Around about thirty years, I guess.

Q. How old were you on the 8th day of July, 1912?

A. A little over forty years.

Q. What was your birthday?

A. On the 6th day of May, 1872.

Q. Then you were forty years of age on the 6th day of May, 1912? A. Yes.

Q. Where did you receive your education, Mr. Ward? A. The Saint Louis College.

Q. Here in Honolulu? A. Here in Honolulu.

Q. And after receiving your education what business did you follow?

A. Machinist, started on machinist.

Q. Where did you learn your trade?

A. Started with my father first.

Q. Your father?

A. With my father, he is in that line of business, has been all of his life. On this line with him and then on plantations, and then in several other lines of business.

Q. What plantations were you employed on?

A. There are so many of them that I could not start to tell you and name them all. There is on this island there is three plantations, Waipahu Plantation, [155—88] Kahuku Plantation—Ewa Plantation.

Q. We will just take those three plantations. In what capacity were you employed on those plantations? A. Machinist.

(Testimony of George E. Ward.)

Q. After leaving the plantations where did you go?

A. Back to Honolulu for the Honolulu Iron Works.

Q. And how long were you working at the Honolulu Iron Works, about, I don't ask you exactly?

A. About seven or eight years ago, not steady work going around to the plantations and coming back again and going away and coming back again, about eight years.

Q. In the neighborhood of about eight years?

A. Yes.

Q. Do you hold any license for marine vessels, for vessels? A. Yes, I do.

Q. What license do you hold?

A. First assistant.

Q. First assistant what?

A. Marine engineer.

Q. Did you hold that license at the time about the time—before the 8th day of July, 1912?

A. Yes, sir, I did.

Q. How long before you were injured did you hold that license?

A. About two or three years, that special form, first assistant.

Q. When did you go to work for the Inter-Island Steam Navigation Company, the defendant in this case, about when?

A. I was there about eight years.

Q. In all. A. In all, yes.

Q. Prior to the accident or your injuries?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. And in what capacity were you employed by the Inter-Island Steam Navigation Company?

A. Machinist engineer.

Q. And where were you employed?

A. In the machine-shop.

Q. Were you under anybody at the machine-shop?

A. I was.

Q. Who was the head of the machine-shop?

A. Mr. Muirhead.

Q. Do you remember the construction or the erection of the [156—89] conveyor belonging to the Inter-Island Steam Navigation Company?

A. I do.

Q. Here in Honolulu? A. I do.

Q. Were you employed by the Inter-Island Steam Navigation Company at the time when the coal-conveyor was constructed? A. I was.

Q. Who did the work on the coal-conveyor?

A. Mr. Ouderkirk.

Q. John Ouderkirk? A. John Ouderkirk.

Q. Is that the Mr. John Ouderkirk who has since died? A. Yes, sir.

Q. Who constructed the steel work on the coal-conveyor? A. I did.

Q. Well, who furnished the plans and specifications and blue-prints, if anyone, for the construction of the steel work?

A. Mr. William Johnson gave me those blue-prints to work on.

Q. Who is Mr. William Johnson?

(Testimony of George E. Ward.)

A. He was superintending engineer of the Inter-Island at that time.

Q. Were you under him or over him?

A. I was under him.

Q. With reference to blue-prints and plants and specifications how did you construct the steel work of the coal-conveyor of the Inter-Island Steam Navigation Company?

A. Every section of that was marked by number and that number was on the blue-print. Therefore, you would see just where that number went.

Q. Was the steel work constructed by you pursuant to the blue-prints and plans and specifications furnished you? A. Yes, sir.

Q. Did you at any time have anything to do with the woodwork, that is the structural work on which the tracks were laid on the conveyor? A. No, sir.

Q. What was your principal employment in the Inter-Island Steam Navigation Company?

A. Machinist and engineer.

Q. Did you do any other work for the Inter-Island Steam Navigation Company besides being machinist and engineer?

A. Only [157—90] when a coal boat would arrive here, Mr. Gedge would send for me.

Q. What?

A. After a coal boat would arrive here and get here why then Mr. Gedge would send for me to go down to the conveyor.

Q. Do you know how many years ago—oh, before

(Testimony of George E. Ward.)

we get to that—how long ago was this coal-conveyor constructed?

A. About five years, I think. The present day you are speaking of?

Q. Yes. A. About five years.

Q. Now, when a coal boat came in where were you ordered to go, if anywhere?

A. Mr. Gedge would send word up to me to say that the coal boat was in; I would have to go down and find Mr. Muirhead and tell him where I was going and all. I would go down to the coal boat.

Q. By Mr. Gedge do you mean the secretary and treasurer of the Inter-Island Steam Navigation Company, the defendant in this case? A. Yes.

Q. And at those times when the coal boat was not in where were you employed?

A. Just as soon as a coal boat would get empty I would go right straight back to the shop again no matter what time of day it was.

Q. Now, by a coal boat do you mean a domestic boat or do you mean coal ships coming in from foreign ports? A. Foreign boats, yes.

Q. For the purpose of unloading coal from the boats?

A. For the purpose of unloading that coal from the boats.

Q. And taking it where?

A. Up into the hoppers.

Q. And subsequently taken where?

A. Thrown into the car and that car was taken over into the coal-yard and dumped.

(Testimony of George E. Ward.)

Q. What was the ordinary capacity of the—what is the amount of coal, the average amount of coal that was unloaded from these coal boats, the tonnage, per ton?

A. The tonnage, are [158—91] you speaking now of per day?

Q. Now, how many tons was the average that these vessels would make, the cargo?

A. I think they would average about five thousand tons, some would be over five thousand some four thousand. I think they would average five thousand tons.

Q. No, when you were employed at the coal-conveyor, Mr. Ward, where were you principally employed? A. On board the ship.

Q. And what were you doing on board the ship?

A. Watching the men how they got their coal out and sometimes down in the hold from one hold into the other hold superintending the discharging of that coal in the ship? In other words bossing the men on the ship.

Q. Bossing the men. Do you know James Akina, one of the witnesses in this case? A. I do.

Q. Well, while you were employed by the Inter-Island Steam Navigation Company where was he employed, upon what portion of the coal-conveyor was Mr. Akina employed?

A. On the coal-conveyor, on the whole coal-conveyor. He would have to be all around, he was running the coal-conveyor part.

Q. Under whose orders were the men who were

(Testimony of George E. Ward.)

engaged on top of the coal-conveyor?

A. Through Mr. Gedge.

Q. And as I understand you—and under whose orders was Akina working?

A. Under Mr. Gedge.

Q. And under whose orders were you working?

A. Under Mr. Gedge.

Q. At the time when the coal boats came in to discharge coal what did Mr. Gedge do, if anything, around the coal-conveyor, what orders did he give?

A. He principally give all orders.

Q. And to whom would he give the orders?

A. If there was anything concerning the boats, the ship, he would come and give me those orders, if it was up on top he would see Akina and he would give Akina the orders, how to place the cars and the men [159—92] to have them work quick, he was ordering all the time, all day, all the time he was there.

Q. Speak a little more slowly?

A. He would give all orders.

Q. Will you describe the method in which the coal-conveyor was operated when you were employed by the Inter-Island Steam Navigation Company? A. The whole coal-conveyor?

Q. Yes.

A. The ship would be laying along side of the wharf under these towers.

Q. Which side of the wharf?

A. On the Waikiki side of the wharf, and the coal is hoisted by these towers, the bucket comes down

(Testimony of George E. Ward.)

and grabs coal up.

Q. Where?

A. In the ship's hold, raises that coal up then the bucket and coal and all then runs unto the hopper, opens and dumps the coal into the hopper and the bucket returns back again for more coal. This is the hopper.

Q. What is the carrying capacity of those buckets? A. One ton of coal.

Q. And what is the weight of the bucket?

A. About one ton.

Q. Now, that the coal is taken that operation is continued Mr. Ward, until the vessel is discharged of coal, is it? A. Yes, sir.

Q. Now, while the coal is being hoisted in the buckets and discharged in the hoppers where did your employment call you to go, where did it leave you to go, where did you go, where were you?

A. Why, I would be on board of the ship until they would call me up there, I would have to go up and see what they want.

Q. Yes, and where were you? You were on board the ship, what particular portion of the ship would you be on?

A. I would be on the deck, the ship's deck and sometimes down in the hold.

Q. Sometimes in the hold?

A. Yes. [160—93]

Q. I will ask you whether or not—whether you would be obliged at any time to superintend any considerable portion of the time in the hold of the

(Testimony of George E. Ward.)

ship? A. Yes, I would.

Q. Now, when the coal is dumped into the hoppers after being taken from the hold of the ship, what is the capacity of these hoppers, what was their capacity, how many tons would they hold?

A. About twenty-five tons full.

Q. Now, with respect to this model where was the hopper in which—with respect to the makai tower where was the hopper?

A. Right in this opening here.

Mr. STANLEY.—That is the opening on the Ewa side just below—on the Waikiki side just below the boom?

Mr. DOUTHITT.—That is the boom, is it not?

A. Yes, sir.

Q. Now, as I understand, Mr. Ward, the hopper was in the same position on the makai tower as it was in the mauka tower? A. Yes, sir.

Q. And how many tons did the hopper in the mauka tower hold? A. About twenty-five tons.

Q. The same amount as in the makai tower?

A. Yes.

Q. Now, how many cars were there in operation on the coal-conveyor at the time that you were employed at the Inter-Island Steam Navigation Company? A. Twenty cars, sir.

Q. What was the carrying capacity, how many tons of coal did these cars hold when loaded with coal? A. Two tons.

Q. And what was the weight of the car if you know? A. One ton.

(Testimony of George E. Ward.)

Q. Then, as I take it, a car loaded with coal would weigh about three tons? A. Yes, sir.

Q. What was the length of the cable which ran around the coal-conveyor?

A. Twenty-eight hundred feet.

Q. What kind of a cable was that?

A. Nineteen wire six strand, three quarter inch diameter wire. [161—94]

Q. You have said, Mr. Ward, that it was a nineteen wire, six strand cable? A. Yes, sir.

Q. Now, what do you mean by the wires, what is the strand with reference to this sample, with reference to this piece of cable (showing piece of cable to witness)?

A. One of these. There is one, two, three, four, five, six.

Q. Then, as I take it, in each one of these six strands which there are or there were nineteen wires? A. Yes, sir.

Q. What were these wires made of? A. Steel.

Q. They call this a six strand, nineteen wire, three quarter inch cable, do they?

A. Yes, sir, nineteen wire strand, three quarter inch diameter. May I say anything about that cable?

Q. Yes.

A. Why do they bring in a cable like that which is entirely different?

Mr. DOUTHITT.—The point is this, Mr. Ward, this is only used for the purpose of illustration, this is not supposed to be a piece of cable by which you

(Testimony of George E. Ward.)

were hurt, it is not identified as that. This is a piece of wire similar to that with regard to strands and number of wires.

Mr. STANLEY.—Similar as regards to make.

Mr. DOUTHITT.—And in the inside the center of this cable was what? A. The core.

Q. Composed of what? A. Hemp.

Q. The cars being then loaded with coal would be taken where from this tower, from the makai tower we will say?

A. That would be taken along in a mauka direction.

Q. On what track?

A. On the Waikiki track.

Q. Until it gets to this tower and if there are many cars under this tower that car is stopped?

A. The grip is released.

Q. That is to say if there are any cars under the makai tower the car is stopped and the grip is released. Now, when the car has proceeded on its way where is it stopped first?

A. Proceeding [162—95] on its way it stops at the scale.

Q. And what is the purpose of having the cars stop at the scale? A. They have to be weighed.

Q. Then what takes place at the scale after the car is weighed?

A. When the car arrives at the scale the hauling cable is taken out of the grip when the car is weighed.

Q. Yes.

(Testimony of George E. Ward.)

A. After the car is weighed then the tail-rope is put into the grip and then it proceeds to the coal-yard and is dumped.

Q. By what means is the car dumped in the coal-yard? By what means is the car dumped?

A. By a dumping block.

Q. Is there any physical or any—are there any men required to dump cars?

A. No, sir, not to dump the cars.

Q. As I understand it they are automatically dumped by a device which is in the track?

A. Yes, sir.

Q. After being dumped,—after the coal is dumped from the loaded car where does it then go?

A. Then it goes on the Ewa track.

Q. Proceeding around what?

A. Proceeding around the curves and the coal-yard then goes along until it reaches this section of the coal-conveyor, then goes out the Ewa track until it is a little this way of that makai tower.

Q. Until it reaches a point about how many feet to the mauka of the makai tower?

A. Why, about five or six feet this way mauka of the center of the tower.

Q. Well, is it under the tower or outside the tower?

A. Well, it may stop sometimes a little bit under the tower, sometimes they are a little bit back from the tower, sometimes they are fifteen or twenty feet away from the tower.

(Testimony of George E. Ward.)

Q. What is the purpose of keeping them there at that point?

A. The grip is released from the cable and then they remain there until the car is needed on the Waikiki side for the purpose [163—96] of loading.

Q. By Waikiki side you mean the opposite track?

A. The opposite track.

Q. Now, when the cars return from their position—from the coal-yard after passing around the coal-yard to the conveyor in what condition do those cars return in the Ewa side of the—that is the Ewa track? A. They are empty.

Q. What construction—how are those cars built or made; explain the mechanical construction of the car, the inside of the car we will say?

A. The inside of the car, the inside, this other part is built like that, an angle, on an angle so as the coal will slide out. These doors have hinges on the top part of the door and they close to this section; when they open that way the coal all slides out.

Q. What is there on the—the inside is built something like a cone-shape, is it?

A. Something like a cone-shape, yes.

Q. On the sides of the cone leading to the top of the cone what is there, if anything, or what was there, if anything?

The COURT.—What character of material is there?

Mr. DOUTHITT.—What character of material is there?

(Testimony of George E. Ward.)

A. The cars are built of wood and lined with sheet iron.

Q. With respect to the sides of the cone leading down to the sides of the car, what was the side constructed of, the sides of the cone, the material inside? A. Wood and sheet iron.

Q. Was the wood over the sheet iron?

A. No, the sheet iron covers the wood.

Q. And what covers the top of the cone or roof of the cone, if anything?

A. Nothing. Covers the cone part, you mean? The top of the car is open.

Q. The top of the cars is open, I understand you, but we have no car as I illustrated here?

A. Yes. [164—97]

Q. What I mean by the top of this cone is what covers this top portion. You have said the sheet iron covers the sides, what covers the top?

A. Angle iron.

Q. What kind of iron? A. Angle iron.

Q. Now, Mr. Ward, you have called a certain—you have designated a certain cable on the model as the hauling cable? A. Yes, sir.

Q. Now, in which direction does the engine run or did the engine run at the time you were working on that coal-conveyor?

A. Are you speaking now of the engine or the drum?

Q. The engine, of course—the drum?

A. As I stand on this side it runs towards the right hand?

(Testimony of George E. Ward.)

Q. Runs towards the right? A. Yes, sir.

Q. Then, that would move the cable in which direction?

A. By this drum revolving to the right it pulls on this cable, that is the hauling cable, that pulls the hauling cable in a mauka direction as far as this sheave.

Q. In other words the drum revolving towards the right draws the cable or the course of the cable is from makai to mauka? A. Yes.

Q. On which track?

A. On this Waikiki track.

Q. And then when it gets to a position around the circular head at the coal-yard end of the coal-conveyor the cable is going in which direction?

A. On the Ewa track.

Q. On the Ewa track?

A. That would be the same track as this is that would be going more towards Waikiki the cars on this track would be going.

Q. I mean after it rounds the curve?

A. Then it would be going back on the other track.

Q. It would be coming back in the opposite direction of the cable moving on the Waikiki track, is that correct? A. Yes.

The COURT.—In other words it runs round and round? A. Yes, [165—98] sir.

Q. It is a continuous cable?

A. It is a continuous cable, an endless cable.

Mr. DOUTHITT.—An endless rope. Now, Mr.

(Testimony of George E. Ward.)

Ward, you say that the hauling cable,—I am referring now to the Waikiki cable—generally runs down to the point marked B on the floor of the conveyor then it goes around what? A. A sheave.

Q. What is the size of that sheave, do you know what the diameter of it is?

A. Between thirty and thirty-six inches in diameter.

Q. Then after passing through the sheave where does it go? A. It goes over the drum.

Q. How many times, if any, is it wound around the drum? A. Four times.

Q. What is the purpose of winding the cable, if any, around the drum?

A. For the purpose of keeping it on the drum and hauling the cable.

Q. It gives it the purchase, don't it?

A. It gives it the purchase.

Q. After passing around the drum, Mr. Ward, where does the cable go?

A. Then it leaves the drum through this sheave above.

Q. Yes?

A. Goes around that sheave down to the sheave in the box from the sheave in the box to another sheave makai about here.

Q. Now, what is the size of those two sheaves immediately above the sheave at the box, at the weight, what diameter?

A. About the same, about between thirty and thirty-six inches.

(Testimony of George E. Ward.)

Q. By sheave do you mean pulley?

The COURT.—A grooved wheel, pulley wheel.

Mr. DOUTHITT.—Then after passing around the drum and up through the sheaves at the box, the weight, and then passing [166—99] through the wheel at the makai end it then comes up onto the main track, on the Waikiki track, and pursues its way around the coal-conveyor, does it not?

A. Yes, sir.

Q. Now, you have designated a certain portion of the cable as being the hauling cable and another part of the cable as the tail rope? The jury is not familiar with what you mean or don't understand what you mean. Will you kindly explain what you mean in mechanical parlance or your language that you use with reference to the coal-conveyor, what you mean by the coal-conveyor and the tail rope?

Mr. STANLEY.—I object to this on the ground that it was gone into thoroughly when Mr. Ward was called as a witness in the case.

The COURT.—I think so.

Mr. DOUTHITT.—Do you know what that weight is, what it weighs at the box, that box?

A. Box and all about five hundred pounds.

Q. What?

A. About five hundred pounds.

Mr. DOUTHITT.—Now, I observe on the model that there is a little chain which is connected with the box and a sort of any eye at the bottom of the coal-conveyor. What is the purpose of the chain?

A. The purpose of that chain there is to prevent

(Testimony of George E. Ward.)

that box from going so high that it will go to the blocks, what we call two blocks, it would break the sheaves if that chain was not there. To prevent it knocking up above.

Q. That is to say it would prevent the box from bumping up against the sheaves that were on top there and breaking them? A. Yes.

Q. That had a tendency to hold the box down, did it? A. It prevented it from hitting the sheaves.

Q. Was it for the purpose of holding the box down so that it would not hit the sheaves?

A. For the purpose of keeping [167—100] the sheaves from hitting.

The COURT.—As a matter of fact the chain is there for the purpose of preventing the box from raising more than the length of the chain?

A. Yes.

Mr. DOUTHITT.—Now, what does this box do while the cars are in operation and the coal is being conveyed along the coal-conveyor, what is the motion of the box if anything? A. The motion?

Q. What does the box do?

A. It rises and lowers, rises and lowers, keeps raising and lowering, raising and lowering.

Q. What is the cause of the raising and lowering?

A. And it will lower a little, six inches or so whenever they are towing cars on this cable. The grip catching the cable that is to start that car and the stopping the car it kind of holds the cable back again and you will see the box will be doing the same thing raising and lowering.

(Testimony of George E. Ward.)

Q. It is due then to the gripping of the cars on the tail rope? A. That you see it moving—

Q. Up and down? A. Yes, six or eight inches.

Q. Do you mean loaded or unloaded cars?

A. Loaded cars.

Q. What salary or wages were you earning while employed by the Inter-Island Steam Navigation Company, the defendant in this case?

A. What is that again, please?

Q. What were your wages or salary?

A. What was the wages or average wages, do you ask me?

Q. Average wage?

A. About one hundred and fifty.

Q. One hundred and fifty what? A. Dollars.

Q. Per what?

The COURT.—Per month?

A. Per month, yes.

Mr. DOUTHITT.—Did you have any other source of income except your wages as a machinist?

A. No, sir.

Q. Have you any source of income now aside?

A. No, sir.

Objected to as incompetent, irrelevant and immaterial and [168—101] motion to strike the answer.

Motion denied. Objection overruled. Exception.

Mr. DOUTHITT.—All I want to show is that this man had was his salary.

Q. Now, Mr. Ward, did you have occasion to observe the condition of the cable which was used on the coal-conveyor on the day prior to the day when you

(Testimony of George E. Ward.)

were hurt? A. Yes, sir.

The further hearing of this case was continued until to-morrow morning at 8:30 o'clock. [169—102]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January Term, A. D. 1914.

GEORGE E. WARD,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY.

June 1st, 1914.

Direct examination of GEORGE E. WARD, re-
sumed.

Mr. DOUTHITT.—About how long prior to the time you were injured did you first have occasion to observe the condition of the cable?

A. The time that the new drum was placed in.

Q. Do you know how long before your injury that was?

A. Three weeks or a month I am not sure of that.

Q. How did your attention happen to be called, under what circumstances—was your attention called to the condition of the cable on that occasion?

A. Why, I was taken down to replace the drum and looking at the cable and looking at the drum.

Q. Who took you down? A. Mr. Gedge.

Q. Where were you working at the time you received the communication from Mr. Gedge?

(Testimony of George E. Ward.)

A. At the Inter-Island shop.

Q. Who telephoned you if any one?

A. I think, Mr. Gedge.

Mr. STANLEY.—That is objected to; there is no evidence that there was any telephone.

Objection sustained.

Mr. DOUTHITT.—Was it a telephone?

A. Mr. Gedge came up there and took me in the automobile and took me down there. [170—103]

Q. What did you do when you got to the coal-conveyor?

A. When I got there Akina was standing there by the place and I looked at the cable and weight there and drum.

Q. Then what was said or done, if anything?

A. I told Mr. Gedge to put in a new cable and put in a new drum.

Q. Why did you tell him to put in a new cable?

A. Because I noticed the condition of the cable.

Q. What was that condition?

A. It was worn and starting cracking, the wires were starting breaking.

Q. What did you say to Mr. Gedge and what did Mr. Gedge say to you on that occasion?

A. I said Mr. Gedge for to put in a new cable and a new drum and he told me to never mind the cable to put in a new drum.

Q. And who was present at that time?

A. James Akina.

Q. In pursuance of that conversation what did you do with reference to the drum?

(Testimony of George E. Ward.)

A. Why, Akina went and got his men and then we took the—where it goes around the drum four times we loosened that, pulled it over the drum so as to get the drum out and then we placed the drum and put the four ropes back again, that was all. And then I went back to the shop.

Q. Where was the new drum made?

A. I think the drum was made in New York.

Q. And where was the drum obtained from?

A. In the engine-room, it is always laid to one side, a spare drum.

Q. Besides Akina and yourself who assisted in putting in the drum, if anyone?

Objected to as irrelevant, incompetent and immaterial.

Objection sustained.

Mr. DOUTHITT.—After you had replaced the drum where did you go?

A. Back to the Inter-Island machine-shop.

Q. When was the next time that you visited the coal-conveyor?

A. When that ship came in, the coal boat. [171—104]

Q. How long after the new drum was put in?

A. About a month.

Q. Did you have occasion to go down to the coal-conveyor between the time when the new drum was put in up to the time the first coal ship came in?

A. No, sir.

Q. During that interim where were you employed, if anywhere?

(Testimony of George E. Ward.)

A. I was employed on the steamer "Mauna Loa," she was laid up for repair work and I was working most of the time on board her and back to the shops.

Q. Now, how long did it take to discharge the first coal boat that came in prior to your accident?

A. About five days and a half.

Q. And where were you employed during those five days and a half on the coal-conveyor?

A. On the coal boat down in the hold.

Q. Doing what, Mr. Ward?

A. Seeing that the men shoveled back the coal so that the bucket could get out.

Q. Where was Akina employed?

A. On the coal-conveyor up above.

Q. With reference to the coal-conveyor what position did Akina hold?

A. Foreman on the top of the coal-conveyor.

Q. What position did you hold? A. Foreman.

Q. Under who? A. Under Mr. Gedge.

Q. Who gave you your orders, if anyone?

A. Mr. Gedge.

Q. What was the general character of those orders that you received from Mr. Gedge?

A. Why, everything about the coal-conveyor.

Q. What?

A. Anything around the coal-conveyor we would receive orders from him.

Q. At the time when the coal boat was in and was being discharged from coal, Mr. Ward, where was Mr. Gedge with reference to the coal-conveyor?

(Testimony of George E. Ward.)

A. Why he would come down in the morning.
[172—105]

Q. What time? A. About a quarter to seven.

Q. Yes.

A. And then seven o'clock the whistle would blow, all the men going aboard the ship he would check there—call their names out; as he called them out they would go up the gang-plank on board the coal boat.

Q. The coal boat? A. Yes, sir.

Q. Go ahead.

A. After that all the men whose name is on the book if there is any extra wanted why then he would pick out some other men and put them aboard the ship. After those men would go up the gang-plank then I would have to follow and place them in one hold or the other.

Q. After that was done where did Mr. Gedge go, if anywhere?

A. On top of the coal-conveyor.

Q. How long did he remain on the coal-conveyor during the day when coal boats were being discharged?

A. Sometimes he would be down there two hours, sometimes two hours and a half, sometimes it would be ten o'clock before he would go back to the office.

Q. Ten o'clock in the morning?

A. In the morning.

Q. Then when did he return?

A. Twelve o'clock, somewhere around twelve o'clock.

(Testimony of George E. Ward.)

Q. And at that time what did he do, if anything?

A. Why he would check these men as they were coming off the ship on his time-book.

Q. After the men had been checked off what did he do? A. He would go for his lunch.

Q. And return to the coal-conveyor at what time?

A. A little before one o'clock.

Q. After returning, what did he do, if anything?

A. He would go to the gang-plank again and call the names out again and they would go aboard the ship.

Q. And after taking the time of the men at the noon hour what [173—106] did he do, if anything?

A. Sometimes he would come aboard the ship and look down in the hold. After he had got through on board the ship he would go up on board the coal-conveyor again.

Q. And what time did he return to the coal-conveyor after the noon hour?

A. Near quitting time.

Q. What time was that?

A. Five o'clock in the week days.

Q. And what time on Saturdays?

A. Four o'clock on Saturdays.

Q. And what did he do at quitting time?

A. Check them men again and some of the men would ask him for a half a dollar or a dollar and he would give it to them and put it in his time-book too.

Q. Mr. Ward, while you were employed by the Inter-Island Company, the defendant in this case,

(Testimony of George E. Ward.)

I will ask you whether you had anything to do with the cable or the installation of cables? A. No, sir.

Q. Do you know whether there was a man employed by the Inter-Island Company for that purpose? A. Yes, sir.

Q. Who was that man? A. Mr. Williamson.

Q. And during all this time, Mr. Ward, do you know the position that Mr. Gedge occupied in the Inter-Island Steam Navigation Company?

A. Why, he was secretary and treasurer of the company, but he had charge of the conveyor also.

Q. You heard the statement made that you were the chief superintending of the coal-conveyor did you?

A. I have never been superintendent of the Inter-Island Company.

Mr. STANLEY.—I move that that be stricken out as not responsive.

The COURT.—It is so ordered.

Mr. DOUTHITT.—You have heard the statement made that you were the chief superintendent of the coal-conveyor, Mr. Ward? [174—107]

A. By the witnesses?

Q. Yes, by Mr. Akina?

A. Yes, I heard him say that.

Q. I will ask you whether you ever occupied the position of chief superintendent of the coal-conveyor for the Inter-Island Steam Navigation Company?

A. No, sir.

Q. Who was that chief superintendent, if anyone?

A. Why, Mr. Gedge was after the coal-conveyor

(Testimony of George E. Ward.)

was running but before *the* Mr. Johnson was superintendent of construction.

Q. What?

A. While the thing was being erected Mr. Johnson was superintendent.

Q. Mr. Johnson was the superintendent of construction was he?

A. He was superintendent of construction, yes, sir. He was superintending engineer of the Inter-Island Steam Navigation Company.

Q. And after the coal-conveyor was running—

A. Yes.

Q. —who was the superintendent of the coal-conveyor, if anyone? A. Mr. Gedge.

Q. Then Mr. Johnson, as I understand you, was the superintendent of construction? A. Yes, sir.

Q. And he was also the chief engineer of the Inter-Island Steam Navigation Company? A. Yes, sir.

Q. It has been testified here, Mr. Ward, that you made all of the repairs on the coal-conveyor, is that correct? A. No, sir.

Q. With regard to repairs, how did those repairs come to be made?

A. If there was any repairs Akina would make repairs on the coal-conveyor unless I was sent for and then I would have to go down there.

Q. Repairs with respect to what portion of the coal-conveyor?

A. Why the cars and such as that that run on the coal-conveyor.

Q. And what else besides cars?

(Testimony of George E. Ward.)

A. Why if one of the engines happened to get a little out of order why they would send up [175—108] to the Inter-Island shops after me.

Q. Who would send?

A. Mr. Gedge would notify Mr. Muirhead and I would go down.

Q. How about anything happening to the cable or the working of the cable?

A. Why that was up to Mr. Gedge or to Akina. Mr. Akina would tell him and then Mr. Gedge would give the orders.

Mr. STANLEY.—What is that?

A. I say that was up to Mr. Akina to report to Mr. Gedge, then Mr. Gedge would give the orders.

Mr. DOUTHITT.—Well, with reference to the cable who were the orders given to?

A. The main cable?

Q. Yes. A. Was given by Mr. Gedge.

Q. To who? A. And Akina.

Q. But who repaired the cable if it was necessary to repair it? A. Why Mr. Williamson.

Q. How long were you working on the coal-conveyor as a foreman before you were hurt, immediately before I mean?

A. Why, I was foreman down there while coal ships were in.

Q. Now, how long had you been working at the coal-conveyor as foreman on the coal ship before you were injured. A. About seven or eight days.

Q. Did anything happen with reference to the cable on the Saturday prior to your accident?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. When were you injured? A. On Monday.

Q. What day—what date and what month and what year? A. On the 8th day of July, 1912.

Q. Now, what happened to the cable, if anything, on the Saturday prior to the date of your injury?

A. The cable came off on that makai end.

Q. During your experience—during all of your experience, Mr. Ward, on the coal-conveyor I will ask you whether you have ever known on the cable to come off, the cable, at the makai end prior [176—109] to that time? A. No, sir.

Q. At what particular portion of the coal-conveyor were you employed at the time that the cable came off on the Saturday?

A. I was down the ship's hold.

Q. And what was it that called your attention to the fact of the cable being off?

A. Why I noticed that the bucket was not taking coal out of the hold and then I came out of the hold and I looked up to the tower. I was told that the hopper was full.

Q. What is that?

A. I was told that the hopper was full.

Mr. STANLEY.—I move that that be stricken out as hearsay.

The COURT.—It is so ordered.

Mr. DOUTHITT.—How many tons of coal will those hoppers hold?

A. Each hopper holds twenty-five tons about.

Q. And how many tons does the bucket hold

(Testimony of George E. Ward.)

which takes the coal from the hold of the ship and dumps it into the hopper? A. One ton.

Q. What did you do after receiving this information? A. I went up to the coal-conveyor.

Q. What did you find there?

A. When I arrived about on the steps I noticed all the men down there so I walked down there. I went down there to see what was going on. When I got there they had got the cable on and the engine was running.

Q. They had the cable on and the engine was running. Do you know when that cable got off the pulleys of your own knowledge, Mr. Ward?

Objected to that the witness had already shown that he didn't know anything about it.

Mr. DOUTHITT.—What did you do after the cable was started running, if anything?

A. I stood there and watched it running for the purpose of seeing what did make it come off.

Q. And what did you observe at that time, if anything? [177—110]

A. I stood there watching on the pulleys and I noticed that that cable was climbing and falling, climbing and falling.

Q. Climbing and falling on what?

A. Onto the flange, climb up part of the pulley and drop down again, climb up part of the way of the pulley and drop down again.

Q. Did you ascertain what caused the rising or climbing on the pulleys?

A. Yes, I saw it was from the condition of the

(Testimony of George E. Ward.)

cable was the cause of it riding.

Q. What was the condition of the cable?

A. Why the wires were sticking out.

Q. Are you able to state, Mr. Ward, how far the wires were sticking out?

A. Why they were sticking out at all different lengths.

Q. What do you mean by the cable sticking out—the wires sticking out?

A. Why they were sticking out from the main cable.

Q. And what caused that, if you know?

A. Why the wires had broke and the wires would spring out.

Q. How far—you say they were sticking out at different lengths; what do you mean by that, Mr. Ward?

A. Why there was some short *one* and there were some long ones.

Q. That does not convey any impression to my mind, Mr. Ward.

A. Why say from a quarter of an inch up as far as an inch.

Q. What was the condition of the entire cable as you observed it at that time?

A. It was in that condition all the way along the cable.

Q. How long is the cable or was the cable?

A. Twenty-eight hundred feet.

Q. And what kind of a cable was used on the coal-conveyor at that time?

(Testimony of George E. Ward.)

A. Nineteen wires, six strands, three-quarter-inch diameter cable, right-handed cable.

Q. A right-handed cable?

A. A right-handed cable. [178—111]

Q. After observing the condition of the cable on the Saturday prior to the accident, Mr. Ward, did you have any conversation with reference to the cable with Mr. Gedge? A. I did.

Q. Do you remember where on the coal-conveyor that the conversation took place?

A. On board of the ship.

Q. Do you mean on board of the coal-ship that was being unloaded at that time? A. Yes, sir.

Q. Now, will you please tell the jury what that conversation was?

A. When Mr. Gedge came down he came aboard the ship and I told him that that cable came off and the cause of it coming off and I told him they would have to have a new cable and he said all right we will put a new cable in.

Q. Now, just a moment, what did you tell him—you say that you told him the cause of the cable coming off; what did you tell him exactly if you remember?

A. That it was riding the pulleys on account of the bad condition of the cable.

Q. And what did he say to that, if anything?

A. He said all right he would put in a new cable.

Q. What reliance did you place upon his promise, if any, that he would put in a new cable?

A. Why he told me that he would put in a new

(Testimony of George E. Ward.)

cable and I relied on that that he would put in a new cable.

Q. What effect, if any, did the promise of Mr. Gedge have upon you?

A. Why I relied that he would put that cable in the next day and that the cable would be a new cable on Monday.

Q. Why did you continue in your employment on the coal-conveyor?

A. Because I relied upon the new cable being put in.

Q. Do you remember what time of day that conversation took place with Mr. Gedge?

A. Around about the noon hour sometime. [179—112]

Q. After the conversation with Mr. Gedge, where did Mr. Gedge go, if anywhere?

A. Why, he went up on the coal-conveyor, I think.
Mr. STANLEY.—What is that?

A. I think he went up on the coal-conveyor.

Mr. DOUTHITT.—What time did you quit work on that Saturday? A. Four o'clock.

Q. In the afternoon?

A. In the afternoon, yes, sir.

Q. Do you know whether there was a new cable at that time available for use by the Inter-Island Steam Navigation Company? A. Yes, sir.

Q. And where was that cable kept?

A. Right in front of the engine-room.

Q. At the coal-conveyor?

A. At the coal-conveyor, yes, sir.

(Testimony of George E. Ward.)

Q. How did the new cable compare in size with the old cable which was being used?

Objected to as incompetent, irrelevant and immaterial and having no bearing upon the issues in this case.

Mr. DOUTHITT.—We want to show that there was an identically similar cable, a brand new cable, a nineteen wire, six strand, right-hand cable there.

Mr. STANLEY.—We admit that.

Mr. DOUTHITT.—You admit that?

Mr. STANLEY.—Yes.

Mr. DOUTHITT.—And available for use at the coal-conveyor of the Inter-Island Steam Navigation Company?

Mr. STANLEY.—That is admitted.

Mr. DOUTHITT.—What time did you go to work on the Monday morning following?

A. I got down there about a quarter to seven.

Q. And where did you go?

A. I went down here by where [180—113] the men were going aboard the ship.

Q. And where was Mr. Gedge when you got to work that morning?

A. He was there on the wharf too.

Q. Taking the time?

A. Waiting for to take the time when the men went aboard the ship, call their names out every one of them.

Q. Now, after the time of the men had been taken where did you work on the coal-conveyor?

A. On board the ship.

(Testimony of George E. Ward.)

Q. Did anything happen on that day?

A. On Monday why the cable came off on the makai end again.

Q. How was your attention first directed to that fact? A. I was called up there.

Q. Where was Mr. Akina at that time, if you know?

A. Mr. Akina was there in the coal-yard.

Q. You know that, do you, of your own knowledge?

A. Yes, sir, he was not there when I got there and they told me he was over in the coal-yard.

Mr. STANLEY.—I move that that be stricken out as hearsay.

The COURT.—It is so ordered.

Mr. DOUTHITT.—You had no knowledge of Mr. Akina's whereabouts at the time? A. Yes.

Q. Your own knowledge, except what was told you? A. Why no, he was not there.

Q. You know that he was not on the makai end of the coal-conveyor?

A. He was not at the makai end.

Q. Or he was not at the scale-house?

Objected to as leading.

Q. Was he at the scale-house?

Objected to as leading.

A. No, sir.

Mr. STANLEY.—I move that it be stricken.

Mr. DOUTHITT.—I withdraw it.

The COURT.—The answer is stricken out. [181

(Testimony of George E. Ward.)

Mr. DOUTHITT.—With reference to the scale-house where was he?

A. He was over in the coal-yard.

Mr. STANLEY.—I move that that be stricken.

The COURT.—It is so ordered.

Mr. DOUTHITT.—With respect to the scale-house where was he?

A. The scale, the coal-scale?

Q. Yes.

A. Conveyor scale the coal-scales are right here as marked on this model.

Q. With respect to the scale-house, Mr. Ward, where was Akina?

Mr. STANLEY.—If you know?

Mr. DOUTHITT.—If you know?

A. He was over in the coal-yard.

Mr. STANLEY.—He was over in the coal-yard. I move that that be stricken.

The COURT.—It is so ordered.

Mr. DOUTHITT.—Was he or was he not at the scale-house?

A. No, sir.

Q. Now, when you got up there on the coal-conveyor what did you observe?

A. When I got up on the coal-scale the man told me that the cable was off. I went down there. The engine was stopped and I went down there and saw the way the cable was off.

Q. Who stopped the engine?

A. Mr. Jimmie Akina.

Mr. STANLEY.—Little Jimmie Akina?

(Testimony of George E. Ward.)

A. Yes, sir, a son of the man who was a witness here.

Mr. DOUTHITT.—Who gave the order to Jimmie to stop the engine, if anyone?

A. What is that?

Q. Who gave the order to Jimmie to stop the engine?

A. Why, I think I did, I gave him that order when I found out about it. I told him to stop the engine.

Q. After the engine was stopped where did you go—after the engine was stopped where did you go?

A. I went down to [182—115] the makai end.

Q. What did you find—in what condition did you find the cable upon arriving there?

A. The condition of the strands were all sticking out.

Q. Yes.

A. And the cable was off four of the pulleys.

Q. Now, are you able to show the jury the condition of the cable as you observed it on the morning you were injured?

A. Yes, sir.

(The witness illustrates with model.)

Mr. STANLEY.—Let that go on the record.

Mr. DOUTHITT.—Of the mauka four pulleys of the series of eight on the Ewa side.

Mr. STANLEY.—Yes.

Mr. DOUTHITT.—Observing that the cable was off the pulleys in that position what did you do, if anything, Mr. Ward?

A. I ordered them to get the crowbars.

Q. Why did you order them to get the crowbars?

(Testimony of George E. Ward.)

A. Why, we always had crowbars for putting them on when they were off four pulleys, three or four pulleys.

Mr. STANLEY.—I move that be stricken as incompetent, irrelevant and immaterial.

The COURT.—The motion is granted.

Mr. DOUTHITT.—Exception.

Q. What did you do when you observed the cable off the four pulleys?

A. We got the crowbars and was putting it on.

Q. By putting it on what do you mean?

A. Why putting it back in its proper place.

Q. In the meantime I will ask you whether work was suspended on the coal-conveyor during the act while it was necessary to put that back?

A. Why, just the running of the cars was stopped.
[183—116]

The COURT.—The cable was also stopped and not running?

A. Yes, the cable was stopped.

Mr. DOUTHITT.—In putting it on was there any slack at the makai end?

A. Yes, sir.

Q. How much slack was there?

A. There was sufficient slack to put it back.

Q. Now, where were you standing?

A. Right here (indicating.) I was at the makai end of the conveyor about here.

Mr. DOUTHITT.—We will put the mark X there.

Mr. STANLEY.—It is on the plank, is it not, be-

(Testimony of George E. Ward.)

low the ties on the Ewa side of the track?

Mr. DOUTHITT.—We will mark it X.

Mr. STANLEY.—The mark X being placed on the planks below the ties on the Ewa side of the conveyor.

Mr. DOUTHITT.—Where was your left foot, if anywhere? A. On the ties.

Q. Now, can you illustrate by means of your crutch how you were endeavoring to put it back?

A. I will have to sit down.

Q. Sit down, Mr. Ward.

A. That way (indicating with crutch).

Q. And pulling in which direction?

A. In this direction.

Q. Towards you? A. Yes, sir.

Q. What happened, if anything, as you were attempting to replace that cable to its position around the pulleys?

A. Why, I was hurled to the wharf.

Q. Well, do you know what the cable did, if anything?

A. I don't know. I was hurt; I had no chance to look back. I was hurled from the wharf. I was looking for something to get hold of.

Q. What?

A. I was looking for something to protect myself to get hold of.

Q. Was there any platform or rail at that particular point on that occasion?

A. No, sir. [184—117]

Mr. STANLEY.—I object to that; it has already

(Testimony of George E. Ward.)

been testified to by the witness.

The COURT.—Objection sustained.

Mr. DOUTHITT.—Now, Mr. Ward, I want you to explain how you got the cable up on the pulleys; illustrate by means of this model?

(Witness illustrates with model.)

Mr. STANLEY.—Showing the cable lying on top of the four mauka pulleys.

Mr. DOUTHITT.—How much slack, if you know, was there necessary to get that cable to its proper position around the pulleys at the time when you were injured?

A. About three inches.

Mr. STANLEY.—Three inches?

A. About three inches to get there of slack, I had to get that cable over three inches.

Mr. DOUTHITT.—Can you explain what you mean by getting the cable over three inches, Mr. Ward?

A. The cable had to get from where it was standing on top of the pulleys, had to come over this way just three inches to get over down into its proper place.

A JUROR.—Q. That would mean that the top of the pulleys was six inches?

A. No, that would mean from where the cable was placed on top of the pulleys it would be three inches to this side here.

Q. Three inches more from it?

A. Yes, to get it over I had to move the cable from where it stands three inches to get it down.

(Testimony of George E. Ward.)

Q. That is what I mean. The cable was on top and then you would have to go beyond that three inches in order for it to drop?

A. Yes, in order for it to drop.

Mr. DOUTHITT.—Who else were working with you at the time that you were thrown over?

A. Along with me?

Q. Yes. A. Nunu, Merseberg, Kalau, Kaina.

Q. You were putting it back with bars as I understand you? [185—118] A. Yes.

Q. Who had hold of the bar that you were using besides yourself? A. Nunu.

Q. At the time that you went over the head of that coal-conveyor what happened to the bar?

A. The bar went with me.

Q. Do you know the height from the wharf at that makai end? A. About twenty-five feet.

Q. Mr. Ward, what was the general condition of the cable while you were working there with regard to the slack in the cable—with regard to whether there was any slack in the cable?

Mr. STANLEY.—Do you mean when in operation, Mr. Douthitt?

Mr. DOUTHITT.—When in operation, yes.

A. While in operation?

Q. Yes.

A. There is slack in the cable while it is running between cars, there is slack.

Q. And elsewhere?

A. All along the whole conveyor it sags between

(Testimony of George E. Ward.)

the dollies, what I mean by sags, it sags down, there is a sag to it.

The COURT.—Between the dollies or the rollers, the roller in the center of the track?

A. Place in the center of the track all along.

Mr. DOUTHITT.—It has been testified here that on the morning prior to the accident that the weight of the box was lifted, why didn't you raise the box at the makai end on Monday when you were injured?

A. It was unnecessary to raise the box.

Q. Will you please explain to the jury why it was unnecessary?

A. Why, on this makai end of the coal-conveyor you will always get slack from the momentum of the cars and the cable and this cable was in the position as I have showed you and being in that V shape it gives you slack itself as you get it over. A cable going this way, that way and that way whilst on the radius of twelve feet after going around has sufficient slack of itself the same as if you straighten out the letter V, it is longer and the [186—119] cars, the momentum of cars always give slack at this end. When you stop the engine the cars don't stop instantly, they continue on and gradually dies off. That gives you slack on this end because this end is ahead of all the cars in motion and at the head of the car is where you get the slack.

Q. Assume that a great deal of slack were required at this makai end how could you get the slack to that portion?

A. If there was not sufficient slack, why then you

(Testimony of George E. Ward.)

would go and raise the box.

Q. Not sufficient slack where? A. Out here.

Q. Out where, at the makai end?

A. At the makai end.

Q. Then you would go and raise the box?

A. You would go and raise the box up, you would get the slack on the top of the platform but you would drop that slack, you would walk two hundred feet and you would pull the slack to there and then you would walk two hundred feet here and get that slack there and you would go all over around the whole conveyor that way two hundred feet of cable and pull it along and you would continue on that way until you got it to the makai end. The grips of all the cars would have to be released and you would have to get that cable all the way around because the most you can pull on the cable is two hundred feet of cable because it weighs—

Q. What is that?

A. Two hundred feet is all you can take and pull it and let it rest, walk on, and pull it two hundred feet and pull it until you get it there, and you do that until you get it to the makai end.

Q. How long would an operation of that kind take, Mr. Ward? A. After you have stopped the cars?

Q. Yes, the whole thing.

A. It will take about two hours.

Q. Do you know whether there is any slack at the scale-house or at the place where the cars are detached from the hauling cable to be attached to the tail rope?

(Testimony of George E. Ward.)

A. There is slack enough [187—120] there when the boys keeps lifting, taking one cable out and replacing the other cable in the grip, there is that slack there.

Q. With what does he take it out?

A. With a hay hook.

Q. And do you know how far that cable is capable of being raised at that point?

A. You can raise that as high as you want, the highest I have ever seen it done was about, maybe, two or three feet, the boy takes that very stand right before everybody's eyes. If you pass me them two ropes I will explain it to you. The two ropes being so close together sometimes I got like that, and when the boy sees that condition and he takes hold of one rope and pulls it away up here and shakes it off to untangle that rope. That happens I don't know how many times a day in throwing one rope and then throwing the other rope. They get one around the other and then he to untangle it he picks it up and stands in position and he shakes it and that will shake that right out and drops it.

The COURT.—And this is done when the cable is in motion, Mr. Ward?

A. Yes, your Honor, while the cable is in motion.

Mr. STANLEY.—Is this little Jimmie Akina that you refer to?

A. Yes, that is Jimmie Akina, Jimmie Akina's son.

Mr. DOUTHITT.—You have testified, Mr. Ward, that you went up to the makai end of the coal-con-

(Testimony of George E. Ward.)

veyor on the Monday when you were hurt to replace the cable to its proper position around the pulleys?

A. Yes, sir.

Q. Whose duty was it to replace that cable in the event that it got off the pulleys?

A. It was Akina's place to replace the cable, but if he is not there I have to go up and do it. He is called around the coal-conveyor so much of the day and his attention is given to the whole coal-conveyor, from the coal-yard up to the wharf.

Mr. STANLEY.—I move that that be stricken out as not responsive. [188—121]

The COURT.—That portion may be stricken out with reference to his attention and so forth.

Mr. DOUTHITT.—Then, if I understand you, if Akina is not there it is up to you to replace the cable?

A. Yes, sir.

Q. Why was it that you complained to Mr. Gedge on the Saturday prior to the accident of the condition of the cable?

A. Because Saturday I went up there to see, the cable had been off and the cause of it coming off and I knew very well that Akina not being around I would have to go there and replace that cable.

Q. During your experience on the coal-conveyor, Mr. Ward, I will ask you whether a new cable, or a new cable which is in reasonably good condition will come off the pulleys at the makai end? A. No, sir.

Q. Why not?

A. Why, there is nothing will take it off from that makai end if the cable is in good condition, there is

(Testimony of George E. Ward.)

nothing to make it come off? There is nothing at all will raise the cable.

Q. Did you have occasion to observe the position of the cars on the day when you were injured?

A. I noticed the empty cars on the Ewa side.

Q. Where were these cars?

A. Mauka of the tower.

Q. Of what tower? A. The makai tower.

Q. Do you remember how far mauka of the makai tower the first cars was on the Ewa track?

A. I think it was some distance away from the tower.

Q. By that what do you mean, Mr. Ward?

A. Why, these empty cars are always stopped on this part of the conveyor, but then there may happen to be three or four or five cars there. When that car is sent around there it always leaves a vacancy [189—122] and if one or two cars are sent around there why, there would be still more space between the cars and the tower.

Mr. STANLEY.—I move the answer be stricken as not responsive.

Mr. DOUTHITT.—We consent to it.

The COURT.—It is so ordered.

Mr. DOUTHITT.—How far away from the makai tower was the first car on the Ewa track, to the best of your recollection, not exact, but approximately?

A. Maybe about ten feet away from the tower.

Q. Where did you next find yourself that Monday, the 8th day of July, 1912, after you fell, where did you next find yourself?

(Testimony of George E. Ward.)

A. I found myself in the Queen's Hospital.

Q. Do you remember what time of the day it was that you awoke to your surroundings? A. No, sir.

Q. What time of day was it that you were hurt?

A. Between nine and ten.

Q. Morning or afternoon?

A. Morning, in the morning, between nine and ten in the morning.

Q. Do you remember how you were hurled through the air? A. No, sir.

Q. After you awoke or came to your senses, Mr. Ward, did you have any occasion to observe the condition of your legs? A. Yes, sir.

Q. Which leg? A. This leg.

Q. Which leg do you mean? A. The right leg.

Q. What was the condition on the inside of the leg?

A. It was all black and blue and was scratched, there was scratches on it right in here.

Mr. STANLEY.—Indicating the inside of the leg above the knee.

A. Above the knee, yes, sir. [190—123]

Mr. DOUTHITT.—And how far along the inside of the leg did those scratches continue?

A. Continued about six inches somewhere around there, five or six inches.

Q. What was the condition of your testicles, if any? A. They were all swollen and black.

Q. How long did you remain in the Queen's Hospital? A. Over two months.

Q. And where have you lived since you came out of the hospital? A. At home on Kinau street.

(Testimony of George E. Ward.)

Q. Since the time of your accident, namely, on the 8th day of July, 1912, I will ask you whether you have done any work or labor? A. No, sir.

Q. I will ask you whether you have been able to do any work or labor since that time?

A. No, sir.

Q. Prior to this accident, Mr. Ward, what was the condition of your right leg?

A. It was in good condition.

Q. Was there anything wrong with it?

A. Nothing wrong at all.

Q. Prior to the accident what was the condition of your hearing and eyesight?

A. All very good, they were good, my sight and my hearing was always good.

Q. Prior to the accident what was the condition of your right arm? A. It was good.

Q. What was the condition of your back or spine?

A. It was all right, well and good.

Q. In other words, Mr. Ward, I will ask you whether you were perfectly sound physically prior to this accident? A. I was.

Q. Did you suffer any pain while you were in the hospital? A. I did.

Q. As the result of this injury? A. I did, sir.

Q. Can you explain to the jury the pain that you suffered? [191—124]

A. I could explain to them that I suffered something terrible, of pain, that I could not move. I had to lay there in one position all the time, I could not move this way or that way and I had just to stand

(Testimony of George E. Ward.)

and suffer that pain.

Q. And how long did the pain continue?

A. Oh, it continued all the time I was in the hospital, even continued after I was home.

Q. Where was that pain?

A. Right in here in the hip, all in there and the backbone.

Q. Indicating the right hip?

A. Yes, the right hip.

Q. Was there any pain in any other portion of your body except the right hip?

A. In my back. In my back here and pain in here.

Q. Indicating the right side?

A. The right side, yes, sir.

Q. In the region of the stomach?

The COURT.—In the groin? A. In the groin.

Q. Was it below the groin or in the groin?

A. Right up here by my ribs.

Q. What? A. Right up here (indicating).

Mr. DOUTHITT.—Between the groin and the lower ribs on the right side.

Q. Now, with regard to your head, Mr. Ward, what was the condition of that after the accident?

A. It pained terribly, terrible pains, headaches.

Q. And how long did this condition continue?

A. For a long time, even at home I had that.

Q. Do you remember how long after you were discharged from the hospital that you still continued to have the pain in the head?

(Testimony of George E. Ward.)

A. Oh, for months afterwards, I didn't count the time.

Q. Are you free from pain at the present time?

A. No, sir, [192—125] on my hip I still have the pain.

Q. How did you rest at night while in the hospital? A. Very poor.

Q. Were you given anything in order to induce sleep? A. Yes, sir.

Q. How do you rest at night now, Mr. Ward?

A. Why, I will rest, maybe sleep for two hours and then I am awake for the pain and I have got to shift over onto my left side and may be sleep two hours on that way and have to shift back again on my back and it is that way all night long.

Q. I will ask you whether you are able at the present time to sleep on your right side?

A. No, sir.

Q. Why? A. I cannot do it, the pain.

Q. The pain where?

A. In the hip, right in here.

Q. Under whose care were you since the time of your accident up to the present time?

A. Dr. Straub.

Q. After you left the hospital, Mr. Ward, did you undergo any medical treatment?

A. Yes, sir, Dr. Straub.

Q. And what was the nature of that treatment?

A. Liniments for rubbing on the hip and taking electricity in the chair he has at his office. My two feet would be in a porcelain pot like warm water

(Testimony of George E. Ward.)

and my two arms would be in two porcelain pots and then he would turn the current on.

Q. Now, how long after your accident did you continue to take those treatments?

A. About nine or ten months I think, maybe longer; I did not keep them up. Close onto a year.

Q. Close onto a year? A. Yes.

Q. Are you taking treatments at the present time?

Objected to as leading.

Objection overruled. Exception.

Q. Are you taking treatment at the present time?

A. No, [193—126] sir, not just at the present time, no more than his liniments I rub on the hip. I don't take electricity any more.

Q. What was the condition of your right hand and arm after the accident?

A. Why, I could not use this arm at all, hardly could pick it up for a long time afterwards.

Q. By a long time, Mr. Ward, what do you mean?

A. Over a year.

Q. Are you able to use it at the present time?

A. Not at anything that is heavy or anything, I cannot use it; I can move my fingers and I can lift it up now that is about all I can. I cannot do anything heavy or pull anything heavy; I have to use my left hand.

Q. After your accident what was the condition of your bladder, if you know?

A. Why, I would have to get up and urinate very often in the evening and at night and very often in

(Testimony of George E. Ward.)

the daytime and that point that I spoke of in here was paining me after I was home for a long time.

Q. By the point that you speak of in here is the point in the right side? A. In the right side.

Q. With reference to blood what was the condition of your urine?

Q. Why, that was examined by Dr. Straub.

Q. Did you see it?

A. No, sir, I didn't see it.

Q. As a machinist, Mr. Ward, I will ask you whether it is necessary to have the free use of your arms and legs? A. Yes, sir.

Q. Have you the free use of the right arm and the right leg at the present time? A. No, sir.

Q. Are you able to follow your vocation as a machinist since this accident? A. No, sir.

Q. What is the condition of your hearing since the accident? A. It is poor.

Q. And in your business as a mechanic I will ask you whether or not it is necessary to have good hearing? A. Yes, sir. [194—127]

Q. What was the condition of your hearing before your accident? A. It was good.

Q. What is the condition of your eyesight at the present time? A. It is not good.

Q. Which eye? A. Why, this eye.

Q. By that eye, you mean what?

A. The right eye.

Q. Will you explain a little more in detail the present condition of your right eye?

A. Why, in reading I have to keep moving the

(Testimony of George E. Ward.)

paper or whatever I am reading, keep moving it all the time, it gets all blurred and that is only for a short length of time and then I have got to drop the book; no matter where I move it it starts blurring.

Q. Was that your condition prior to your accident? A. No.

Q. In your vocation as a machinist, Mr. Ward, I will ask you whether it is necessary to have good eyesight? A. It is.

Q. Mr. Ward, I will ask you whether you are able to use your right leg? A. No, sir.

Q. I will ask you whether you are able to walk on it?

A. Oh, not at all, I cannot put no pressure on it whatever.

Q. If you put any pressure on your right leg what is the result? A. Pain.

Q. Where? A. In the hip here, the right hip.

Q. By what means do you get around?

A. By two crutches.

Q. How much weight are you able to put on your right leg, Mr. Ward, without sustaining pain?

A. Hardly any; I think it is only the weight of the leg about all. The minute it starts pressing it immediately gives pain, by relieving the weight of the leg on the floor that is about all I can do, but now I cannot put no pressure on that, I can touch the floor coming down like that. I can touch the floor, but I cannot put no pressure on that foot. If I do I get the pain in the right hip.

(Testimony of George E. Ward.)

Q. Is it severe or is it light pain?

A. Yes, it is a [195—128] severe pain.

Q. Mr. Ward, I will ask you, since your accident, whether you have been able to get on and off street-cars? A. No, sir.

Q. Will you explain to the jury why that is?

A. Why, I cannot get up on the steps, the steps are too high.

Q. Well, couldn't you raise on your crutches and put your leg up?

A. Raise on my crutches, yes, but if that car starts or anything what am I going to do if I release my crutch, if I release my hand on the crutch and the car starts up I have lost my crutches, what am I going to do?

Q. Mr. Ward, you say that the cable that was used on this occasion was a right-handed cable?

A. Yes, sir.

Q. You were shown a sample of cable which is here on the desk, what is that kind of a cable?

A. Left-handed cable.

Q. What is the difference between the right-hand cable and the left-handed cable, Mr. Ward?

A. The way that the wires is wound in the strands.

Q. What was the kind of cable that was used on the coal-conveyor? A. A right-handed cable.

Q. Could a left-handed cable be run the same as a left-handed cable?

A. Not run the same as a right-handed, if you do you would untwine the whole cable.

(Testimony of George E. Ward.)

Q. What?

A. If you are to run a left-handed cable run it the same way on the drum you would untwine the left-handed cable.

Q. The drum running towards the right?

A. Yes, sir.

Q. In other words, as I understand you, the strands have to go,—the strands of the cable have to be in the same direction as the running of the drum?

A. Yes, sir, if they do not it will untwine.

Q. If you have a cable the strands of which are moving in the opposite direction to the direction in which the drum was [196—129] running, what would be the result?

A. It would untwine the cable.

Q. Mr. Ward, is there any difference between the sample of cable that has been shown you and the cable that was in use on the Inter-Island Steam Navigation Company's coal-conveyor at the time you were injured? A. Yes.

Q. What is the difference?

A. The one which was in use at the time I was injured was a right-handed cable, the wires of that strand was opposite to this one turning right hand. In this cable the strands are turning the opposite way, left handed.

Q. What else with respect to this cable?

A. There are no wires sticking out in this cable and there was in the cable that was in use at the time of the accident.

Q. In other words, this is a sample of a left-handed

(Testimony of George E. Ward.)

cable, is it not?

A. That is a sample of a new left-handed cable.

Q. Mr. Ward, did you ever leave the employ of the Inter-Island Steam Navigation Company prior to your accident? A. Yes, sir.

Objected to as incompetent, irrelevant and immaterial.

Mr. DOUTHITT.—I want to show that he left the employ and came back, that he left at such a date and went east and came back.

Objection withdrawn.

Mr. DOUTHITT.—Did you ever leave the employ of the Inter-Island Steam Navigation Company?

A. Yes, sir.

Q. Now, where did you go, if anywhere?

A. Back east.

Q. Do you know when that was?

A. In the month of May, 1911.

Q. How long did you remain in the east?

A. About close on to four months before I got back here.

Q. When did you return to the Inter-Island Steam Navigation Company?

A. September 1st. [197—130]

Q. In the employ—

A. September 1st, 1911, no, I think it was—yes.

Q. When you got back to work in September, on the first of September, 1911, what cable was being used on the coal-conveyor of the Inter-Island Steam Navigation Company?

A. The same cable that I saw—that was in use

(Testimony of George E. Ward.)

at the time of my injury.

Q. Do you know the life of a cable which is subjected or was subjected to the same amount of work that the particular cable was subjected to by which you were injured? A. Eight months.

Q. Do you know how long that cable had been in use at the coal-conveyor of the Inter-Island Steam Navigation Company? A. No, sir.

Q. When you returned, as I understand you, on the 1st of September— A. Yes,—

Q. You found the same cable by which you were subsequently hurt there? A. Yes.

Q. And that cable, as I understand you, was used on the coal-conveyor? A. Yes, sir.

Q. At different periods of time between the 1st of September and the 8th day of July—the 1st of September, 1911, and the 8th of July, 1912?

A. Yes, sir.

Q. Well, Mr. Ward, knowing the condition of the cable as you have testified on the Saturday immediately prior to the accident, I will ask you why did you continue in your employment?

Objected to as already asked and answered.

Objection sustained.

Q. At the time that the cable of the coal-conveyor was overhauled prior to the time of the coal ship coming in who overhauled the cable and overhauled the coal-conveyor? A. Jimmie Akina.

Q. Akina? A. Yes, sir. [198—131]

Q. And where were you?

A. Up at the shop, the Inter-Island shop working

(Testimony of George E. Ward.)

on the "Mauna Loa" that was laying opposite the shop on Queen street.

Q. The Inter-Island machine-shops are a distance from or about how far from the coal-conveyor, about?

A. About half a mile, I guess.

Q. This coal-conveyor is located on the waterfront opposite the Honolulu Iron Works, here in the City of Honolulu? A. Yes, sir.

Q. You say that when you fell you fell on the dock below, Mr. Ward? A. Yes, sir.

Q. And the dock is made of what? A. Wood.

Q. Mr. Ward, have you any other vocation except that of machinist? A. No, sir.

Q. Do you know anything else besides that?

A. No, sir. [199—132]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, A. D. 1914, Term.

LAW No. 7721.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED,

Defendant.

Monday, June 1st, 1914.

Cross-examination of GEORGE E. WARD.

Mr. STANLEY.—Mr. Ward, have you ever had experience on a coal-conveyor other than this one

(Testimony of George E. Ward.)

of the Inter-Island Company? A. No, sir.

Q. All your experience with reference to cables such as are used on this coal-conveyor of the Inter-Island Company has been derived from your work at that conveyor? A. Yes, sir.

Q. Now, when you speak of the life of the cable being eight months, what do you mean, Mr. Ward?

A. Why, a cable as used down at that coal-conveyor with the amount of work that that coal-conveyor had done, that cable was only good for eight months when it should have been replaced by a new one.

Q. How do you know that?

A. From my experience down there. [200—133]

Q. What has been your experience down there; have you ever taken out cables in eight months?

A. Oh, they have taken them before that, Mr. Stanley.

Q. And do you know why they have taken them out before that? A. Yes, sir.

Q. Now, why was it?

A. Because they should have a new cable.

Q. Is that the reason? A. Yes, sir.

Q. And that is the truth?

A. That is the truth. At another time in two weeks they had to put in a new cable.

Q. Because the other cable was worn out in two weeks? A. No, it was not worn out, Mr. Stanley.

Q. Was its life, then, two weeks?

A. What is that again?

Q. Was its life, then, two weeks?

(Testimony of George E. Ward.)

A. No, that was the cable that caught on the drum and unstranded just the same as I have been showing with this left-hand cable and therefore could not be respliced because the splicing came out.

Q. Now, Mr. Ward, is it not a fact that the Inter-Island Company from the time of starting the business of this conveyor that they had trouble with the drums, that is, the cable was not wound properly around the drums and consequently the cable was being stranded, the strands came out and the cable generally came out, unwound and they had a great deal of difficulty before they got onto the way of doing?

A. Yes, that is what I am telling you now of the unstranding.

Q. Then it was not on account of the cable being worn out and being removed by the company in a shorter period than eight months, it is because of the way that it was wound on the drum, on account of the way the cable was wound around the drum that spoilt the cable, was it not?

A. The strands came out, [201—134] and the splices came off.

Q. When you took these cables off before they had run for eight months, it was not that the cable was all worn out by use, but because it was improperly and unskillfully wound around the drum, that is right, is it not?

A. Because the strands came out we could not use it, that cable, we would have a cable coming off the dollies, or anything else and the splices coming out.

(Testimony of George E. Ward.)

Q. And as I say, the only reason they took out the cable in a less period than eight months was because of the manner in which it was wound around the drum, making the cable go to pieces there, that is right, is it not?

A. Yes, because it became untwined.

Q. Now, then, I ask you what do you mean by the life of the cable being eight months?

A. A cable like the cable that was on the conveyor at the time of my accident, and a cable with the constant work that they had done there, the amount of work, was only good for eight months, and should have been renewed by a new cable.

Q. How do you know that; why don't you put it in after seven months or nine months?

A. From my experience down there, down at the coal-conveyor, Mr. Stanley, I answered you that.

Q. That is all from your experience?

A. Yes, sir.

Q. Now, do you mean, Mr. Ward, that when a cable has been working there for eight months that it is unfit for use?

A. It depends on the condition of the cable. If that cable had been used the same as cables before and these strands had started cracking, the wires had started cracking, it would only be about eight months that you would start seeing these wires breaking, then it should be renewed. The life of the cable is eight months, that is all, and it wears down and the wires start [202—135] cracking and coming out.

Q. Now, I am not asking you, Mr. Ward, about the

(Testimony of George E. Ward.)

life of any particular cable, I am asking about the life of a cable down there, not this particular one by which you were injured, but any cable; do you mean when you say the life of a cable—not this particular cable—the life of a cable is eight months, do you mean at the end of eight months it is unfit for use?

Objected to.

Mr. STANLEY.—Do you mean, Mr. Ward, that when a cable has been in operation, not lying down on the wharf, or not packed up in tissue paper, or anything of that kind, but when it has been in operation on the coal-conveyor for eight months then it is unfit for use, unfit and dangerous to use?

A. No, sir.

Q. Then what do you mean by the life being eight months?

A. If you will please let me explain; if a cable is used for the purpose of hauling those cars which has grips on the grips will tear the wire more than it will when it is running on the sheave or any other piece of machinery, but the grips when they grip on down on that wire it does not start that car on an instant, that cable drags through that grip two, three and four feet before that car is in motion and that is what tears the cable out, that class of work; where the cable is hauling up coal it has not anything like that friction, no friction like that, that that cable has. And if you start using a brand new cable, whether it has been manufactured right by the manufacturing people that makes it and placed in that coal-conveyor the day after it is got, and you use it dis-

(Testimony of George E. Ward.)

charging as much coal as the cable has I have seen down there, and the amount of cars hauled, and the amount of times that the grips had gripped that cable and tearing that cable, that cable was only good for eight months, that is the life at that class of work I am speaking about. [203—136]

Q. And you are emphasizing with your right hand all the time, Mr. Ward?

A. With this right hand, yes.

Q. Now, Mr. Ward, I asked you a very simple question; I said, do you mean that a cable subject to the use that is had on this coal-conveyor where it goes around the dollies—

A. Yes, sir.

Q. Listen—it is drawing coal-cars, it is working on dollies, it is subject to the grips on the cars; now, my question is simply: Do you mean having been subject to that use for eight months it is then unfit for use and dangerous; that is a simple question.

A. Why I just explained to you.

Q. Will you answer my question? Do you mean it is unfit for use and dangerous?

A. If the wires is cracking and starts sticking out.

Q. If the wires are cracking and start sticking out, yes.

A. Yes.

Q. If they are not, the cable can run no longer than eight months, can it?

A. If the wires are in a smooth condition.

Q. And how much longer can they run?

A. I do not know, on that class of work, it all depends upon the work that that cable had done. If it had worn them little wires down and the wires had

(Testimony of George E. Ward.)

parted and were sticking out, that wire should be renewed.

Q. You testified at the last trial, did you not, Mr. Ward, in this case? A. Pardon me?

Q. You testified, did you not, in the last trial of this case? A. I did, I testified.

Q. Didn't you testify there, Mr. Ward, that all you meant by saying the life of a cable was eight months was that it is a matter of good business for the company to put in a cable at the end of eight months so as to insure that there would be no [204—137] stoppages in the work?

A. Why, let me explain that. I explained that the life—

Q. Did you testify that at the last trial?

A. I don't remember now exactly the words that I used.

Q. You don't remember? A. No.

Q. Well, I will ask you then, not giving your words, I will ask you if you testified in substance that what you meant by the life of a cable being eight months was that it would be a matter of good business policy for the company which wanted to get these vessels unloaded as quickly as possible to renew a cable after eight months so that there would be no stoppages in the work?

A. Well, I meant that these wires—

Q. Did you so testify in the last trial?

The COURT.—Answer the question, if you can, as put to you, you can make any explanation you want afterwards. Do you recall any such statement,

(Testimony of George E. Ward.)

the purport and import and effect of which Judge Stanley has stated to you with reference to your reasons for giving the life of a cable at eight months at the last trial of this case; do you remember making any such statement?

A. Why, no, your Honor, I do not remember those things.

Mr. STANLEY.—You have no recollection of stating anything of that kind?

A. I have a recollection of stating about eight months the life of that cable used on that class of work.

Q. But you have no recollection of saying that what you mean by that was merely this, that it would be a matter of good business policy, a matter of advantage to the company to renew its cable every eight months so as to avoid stoppages in the work?

A. Why, if I said that, Mr. Stanley, I meant that the cable would come off the dollies, that would be stopping that work, to stop the cable on account of coming off the dollies, that is stopping that part of the work, it might [205—138] have stopped *the where* towers from working, that is what I meant if I said that.

Q. Have you a recollection of saying that would be a matter of good business policy for the company to renew its cable every eight months, that the work on the track, in the towers and on the track would not be stopped? A. I don't remember saying that.

Q. Do you remember testifying that that did not mean or do you want the jury to understand that at

(Testimony of George E. Ward.)

the end of eight months the cable would not be unfit for use or dangerous? A. What?

Q. Do you remember stating at the last trial of this case that at the end of eight months the cable would not be dangerous or unfit for use?

A. If it had not been worn down and cracked, if the wires had not been cracked,—if the wires were simply worn down smooth that is a different thing altogether but if these little wires are broke and they stick out then it should be a new cable, that is what I meant by the life of the cable in that class of work and used in that way.

Q. So what you meant, Mr. Ward, is that when a cable is broken, when the wires are half cracked, that then the life of such a cable is eight months?

A. I mean that if that cable had hauled that amount of coal or been used by the grips starting these wires breaking, that that is the life of that cable.

Q. If the cable is worn out practically?

A. That is it starts cracking, Judge Stanley.

Q. What?

A. That is if these wires are cracking and breaking and start coming out.

Q. Now, your first complaint about this cable, Mr. Ward, was made when?

A. At the time I put in a new drum.

Q. And that was about when?

A. About a month before [206—139] the accident.

Q. About a month? A. About a month.

(Testimony of George E. Ward.)

Q. That was early in June, was it not?

A. Sir?

Q. Early in June? A. Yes, sir.

Q. And that was the first time you made a complaint about this cable?

A. Yes, that is the first time I made a complaint about that cable. That is the time that I saw that the wires were cracking and coming out.

Q. Now Mr. Ward, I understand that this model was built by you?

A. Yes, sir, I put that model together.

Q. Done by hand or by machinery?

A. Well, the putting together was done by hand, but those little pieces of wood were sawed by a planing-mill.

Q. Not by you? A. No, sir.

Q. And these dollies, were they made by you?

A. They were made by me.

Q. They were made by you? A. Yes, sir.

Q. When I refer to dollies, they call them pulleys in this case, appearing at the makai end of the coal-conveyor, what do you call these little jiggers appearing on the tower? A. Wheels and sheaves.

Q. Who were they made by? A. By me.

Q. By hand? A. By hand.

Q. Which hand?

A. By mostly the left hand and the right hand assisting it.

Q. Are you left handed?

A. Yes, sir, I am now.

Q. Are you right handed or left handed?

(Testimony of George E. Ward.)

A. I am now left handed. Before my accident I was right handed.

Q. Up to the time of your accident and up to the time that you made this model you were right handed? A. What is that?

Q. Up to the time of your accident and up to the time that [207—140] that you made this model you were right handed?

A. Up to the time of my accident I was right-handed, after the accident why I had to use my left hand.

Q. Up to the time that you were injured—

A. Yes, up to the time that I was injured I was right-handed.

Q. And this is the only work you have done since your accident?

A. That is the only work I have done since.

Q. And you say, Mr. Ward, that you erected the steel work or put the steel work on the coal-conveyor some five years ago under the direction of Mr. Johnson? A. Yes, sir.

Q. You personally attended to putting down the tracks? A. Yes, sir.

Q. Dollies and such? A. Yes, sir.

Q. And up to the time that you were hurt no change was made, was there, in the general appearance or condition of the coal-conveyor?

A. Not that I remember of.

Q. Not that you remember. For instance when the thing was installed, when it was first built there was no platform outside the tracks at the makai end?

(Testimony of George E. Ward.)

A. No, sir.

Q. And there was no rail? A. No rail.

Q. And that condition lasted from the time it was built up to the time that you were hurt?

A. Yes, sir.

Q. And you knew that?

A. Yes, sir, I knew that.

Q. Did you, Mr. Ward, assist or direct the reeving of the first cable that was used on the coal-conveyor, the reeving or running of the first cable?

The COURT.—The reeving or running of the first cable?

A. No, your Honor, that was done by a cable man, but I was there when it was done. I did not assist in any way.

Mr. STANLEY.—What were you doing there?

A. I was foreman there.

Q. You were foreman of what?

A. Of the coal-conveyor. [208—141]

Q. And the first cable which was rove or put on the conveyor was put there by Mr. Williamson or by somebody outside of yourself? A. Yes, sir.

Q. But you were on the coal-conveyor as foreman?

A. Yes, sir.

Q. Doing what? A. Foreman.

Q. What were you doing?

A. Why, bossing the men.

Q. Bossing the men? A. Yes, sir.

Q. Where? A. All around the coal-conveyor.

Q. All around this coal-conveyor?

A. Yes, wherever they had to work.

(Testimony of George E. Ward.)

Q. Wherever they had to work? A. Yes, sir.

Q. On top of the conveyor?

A. On the platform, up in the engine-room, up here.

Q. And how long did you continue to act as such?

A. I don't know the length of time.

Q. Well, give the jury some idea.

A. Why after the coal-conveyor had all been erected I think there was one coal boat came in and I went down there.

Q. Went down where?

A. To the coal-conveyor and after that why I went back to the shop again.

Q. And you continued, did you not, to act as foreman of the conveyor from the time that the conveyor was erected up to the time that you were hurt; that is, whenever a foreign coal ship would be in?

A. Yes, sir, whenever a foreign coal boat would be in.

Q. And your duties were to boss the men and have general charge of that conveyor, were they not?

A. No, down in the ship.

Q. What did you mean a few minutes ago that you were up here when the cable was being rove and you were foreman of the job and were bossing the men on top of the conveyor? [209—142]

A. There was no ship in there, that was before a coal boat ever came to the island, to that conveyor. That is the first cable put in.

Q. You were foreman or what when the boat was not in,—were you foreman in charge of construction

(Testimony of George E. Ward.)

or what? A. I was foreman of the men.

Q. What were they doing?

A. Why, whatever they had to do.

Q. Do you mean unloading vessels or coaling the Inter-Island vessels?

A. I told you no coal boat had arrived when that was put in.

Q. Were they then loading their own boats, Inter-Island boats?

A. Yes, sir, at times they had to load Inter-Island boats.

Q. And when they were loading the Inter-Island boats you were foreman of the conveyor or bossing the men up here on the platform? A. Yes.

Q. When did you cease that operation?

A. Right after the coal boat was discharged.

Q. What?

A. Right after that first coal boat was discharged I went back to the shop, I was through with that.

Q. Then there was no foreign boat in, was there?

A. I told you just now, Mr. Stanley, that right after the first foreign coal boat then I went back to the shop.

Q. Well, now, we will take the first foreign coal boat, when that was in you were bossing the whole show, were you not?

A. I was bossing the which?

Q. The whole show, the whole conveyor.

A. I was foreman there, yes.

Q. Of the whole conveyor?

A. The coal-conveyor.

(Testimony of George E. Ward.)

Q. Directing these men and supervising all the work there? [210—143] A. Yes, sir.

Q. Now, then, when first coal boat had discharged you went back to the shop? A. Yes, sir.

Q. When did you next go down to the coal-conveyor? A. When the next coal boat came in.

Q. And what was your job then?

A. On board the ship.

Q. Now, was there a distinction then between your job when the first coal boat was in and the second coal boat was in? A. Yes, sir.

Q. Who made that distinction?

A. Why Mr. Larsen he had charge and with all stevedores, not Inter-Island men, but stevedore men. Mr. Larsen he bossed the first boat that arrived, foreign boat, with his men.

Q. Now, I am asking you who changed your occupation? A. The company.

Q. And who for the company?

A. The Inter-Island Company.

Q. Which particular man, the corporation didn't do it itself? A. Mr. Gedge.

Q. The corporation didn't do it itself?

A. Mr. Gedge.

Q. That is several years ago? A. Yes, sir.

Q. And what did Mr. Gedge say to you?

A. Mr. Gedge said that he would take charge of the discharging of the boats, that he would not give it to Mr. Larsen any more, Larsen took too much time, too much expense, and he took full charge.

Q. What did he say to you?

(Testimony of George E. Ward.)

A. Well, he didn't say anything to me, but when the ship came he placed me down in the ship. He didn't say anything to me.

Q. What did he say to you first before placing you down in the ship, what did he say to you?

A. That he would take charge of discharging the ships.

Q. I am asking you what instructions he gave to you?

A. Why, when the ship came in he told me to go aboard of the [211—144] ship.

Q. And told you to stay there?

A. I was to look after the men aboard the ship.

Q. Did he tell you that your duties now, Mr. Ward, will be to go down on the ship and stay there and watch the discharge of the cargo, of the coal, is that right?

A. Whenever I was needed on top why they had to call me.

Q. Who told you that? A. Mr. Gedge.

Q. So that Mr. Gedge told you to go down there and watch the discharge of the cargo and also attend to any repairs that would have to be made on the conveyor itself?

A. If I was called up there I would have to go up there.

Q. Now, will you tell us as well as you can what Mr. Gedge's instructions were to you?

A. I have just very plainly told you, Mr. Stanley, that I was to be aboard the ship.

Q. Anything else?

(Testimony of George E. Ward.)

A. And if I was called up above I would have to go up above.

Q. He told you that?

A. Yes, that was my orders.

Q. And your job down there was foreman of the coal-conveyor?

A. I was foreman, but my principal work was on board the foreign boats.

Q. Well, so your principal work, you were foreman of the coal-conveyor, were you?

A. I was foreman down there, and had to be foreman over the men as whole and whenever Akina would not be handy then I would be called and I would have to go up there, Mr. Stanley.

Q. Mr. Ward, I show you the complaint in this case and ask you if that is your signature?

A. Yes, that is my signature.

Q. And this is your signature to the affidavit here?

A. Yes, my signature. [212—145]

Q. You have sworn in this case—did you not swear when you filed the case originally as follows: That on said 8th day of July, 1912, and some time prior thereto the plaintiff herein was employed by said defendant as the general superintendent of said coal-conveyor?

A. Well, now, Mr. Stanley—

Q. I am asking you did you so swear?

A. Mr. Stanley—

Q. Answer my question yes or no and then make your explanation? A. Yes, sir.

Mr. DOUTHITT.—Now, your explanation.

(Testimony of George E. Ward.)

A. Why, the next time that I had notice about superintendent I noticed in the Advertiser paper. I clipped that piece of paper and I took it down to my attorney, Mr. Douthitt, and I asked him why was the reason that I was put in there as superintendent, that I had never been a superintendent in the Inter-Island and I complained about them words. I did not make that thing out, Mr. Stanley, my attorneys done that.

Q. Out of their own heads? A. They done it.

Q. Do you mean to say that Mr. Douthitt knew anything about your employment there until you told him?

A. When I read it in a paper about being a superintendent I clipped the little piece of paper out and told him that I didn't say that and why was it put in.

Q. You have answered that three or four times.

A. That I told him I was foreman.

Q. Did Mr. Douthitt know anything about your employment down there except what you told him?

A. I didn't tell him that I was superintendent.

Q. What?

A. I didn't tell him that I was superintendent.

Q. Then you cannot understand, then, how it is that you were made to swear to the fact that you were general superintendent [213—146] of the conveyor?

A. I took the clipping of the paper, the piece of paper down to him and asked him that I was never superintendent and I had never said so.

Q. Can you kindly explain how that expression

(Testimony of George E. Ward.)

got into your complaint? A. No, I do not.

Q. Then, you amended the complaint, did you not, Mr. Ward, so as to read, the plaintiff herein was employed by defendant as the foreman of said coal-conveyor?

A. I told my attorney.

Q. You told your attorney we must change this complaint, don't call me general superintendent, but call me foreman of the coal conveyor?

A. I did not tell him that we must change that thing, I told him that I did not say that I was superintendent.

Q. Did you— A. I told him I was foreman.

Q. Did you tell him, Mr. Ward, that you were foreman of the coal-conveyor?

A. I told him that in the start, that I was foreman.

Q. Of the coal-conveyor? A. Yes, sir.

Q. Not of the coal ships? A. Yes.

Q. But of the coal-conveyor?

A. Yes, that is was also foreman for the Inter-Island Steam Navigation Company.

Q. And foreman of the coal-conveyor?

A. Foreman down to the coal-conveyor.

Q. You say you put up the original coal-conveyors from the blue-prints handed to you by Mr. Johnson. Examine those and see if they are the blue-prints?

A. I put up the steel work.

Q. All of the steel work?

A. I think that is a blue-print given to Mr. Ouderkirk. That is principally woodwork.

Q. It is not a—

(Testimony of George E. Ward.)

A. It is one of the blue-prints Mr. Ouderkirk used.

Q. It is not a blue-print given to you?

A. It is a blue-print [214—147] of the track, that is all.

Q. Does not that show the steel work?

A. That shows the track, the portion of the track.

Q. And it is according to a blue-print given you like that, is it not, that you put up the steel work of the conveyor? A. The track, yes, sir.

Q. And the dollies? A. And the pulleys.

Mr. STANLEY.—I ask that the blue-prints be marked for identification.

The COURT.—It may be marked for identification as Defendant's Exhibit 1.

Mr. STANLEY.—Now, on these coal ships, Mr. Ward, a number of stevedores were employed—on these foreign coal ships a number of stevedores were employed and you say that those men were hired by Mr. Gedge? A. Yes, sir.

Q. Secretary and treasurer of the company?

A. Yes, sir.

Q. And you know, do you not, that there were lunas over those stevedores?

A. There was one man placed in the hold and he was a kind of a luna when I had to go back to a different hold than he was in he would have a say over the men.

Q. There was one luna, was there not, in each hold? A. Yes, sir.

Q. In each hold? A. In each hold.

Q. And those were men who were paid extra, were

(Testimony of George E. Ward.)

they not, for acting as lunas?

A. I don't know their wages, Mr. Stanley. I don't know.

Q. I am not asking you whether it was a dollar and a half or two dollars, but were they not paid extra for acting as lunas?

A. I don't know, Mr. Stanley.

Q. You never heard of it?

A. I don't know what their wages were; I don't know whether they were paid more or not.

Q. And you do know there are stevedores or lunas over the [215—148] different holds of the vessel?

A. Yes, sir.

Q. What are their duties?

A. To tell the men where to shovel. If I am there they take orders from me if I tell them to shovel out of this place or out of that.

Q. To keep the men working?

A. To keep the men working.

Q. To keep the men working and supervise the shoveling of the coal to have a cargo discharged as quickly as possible? A. Yes, sir.

Q. What were your duties? A. Foreman.

Q. What were your duties?

A. From one hole to the other bossing them men.

Q. You've got a boss in each hole to see that the coal was properly shoveled? A. Yes.

Q. What were your particular duties, to see that this man or the other man, the lunas, were getting the coal out?

A. I was boss over him and all the men, when I

(Testimony of George E. Ward.)

was there he had no word to say, I had all to say and when I left then he had a say about the men who were working or loafing.

Q. When you went away from the hold you'd leave him there looking after these stevedores?

A. Yes.

Q. And when you were there he would be there still bossing the men? A. He would be there.

Q. Bossing the men?

A. I would be bossing them.

Q. And what would he be doing?

A. He would be there.

Q. Doing what?

A. He would do anything he got to do, sometimes he'd take a shovel and shovel coal.

Q. What other duties did you have besides seeing that these lunas did their duty?

A. Why, from one hold to the other, I just told you that, Mr. Stanley, that was a part of it, unless there was some stoppage and I was called on top, why then I would go and see what I was called for. [216—149]

Q. You know, do you not, Mr. Ward, that when a coal-ship comes in, the first few days that there is nothing to be done in the way of shoveling coal at all, that the bucket is lowered down into the hold and automatically grabs the coal up and it is swung up to the top? A. Yes.

Q. There is really nothing to be done there in shoveling?

A. Only to watch the buckets and watch the coal,

(Testimony of George E. Ward.)

whether the coal comes out, that is my duty.

Q. To watch the bucket?

A. To watch the bucket.

Q. To watch the coal coming out?

A. To watch the coal coming out.

Q. Now, Mr. Ward, in other words you were practically tallying that coal, that is right, is it not?

A. What is that again?

Q. You were practically tallying the coal?

A. I was not tallying if it was going below 'tween decks, if they had 'tween decks, then I told Mr. Gedge to come down and put some more men in and shovel in that 'tween decks. If there was no 'tween decks the shovel could continue on in that hold until we moved again.

Q. I understand you were forty years of age at the time the accident happened? A. Yes.

Q. And from your boyhood you were machinist and engineer? A. Yes.

Q. And that has been your life's work?

A. Yes, that has been my life's work.

Q. Around machinery? A. Around machinery.

Q. And up to the time that you got this job, not shoveling coal, but seeing others shoveling coal, that has been your sole work, has it not?

A. I was a machinist and when I was called up why I would go up, I was taken down there as foreman. [217—150]

Q. That is the only time that you acted as foreman, seeing that coal should come out of a ship?

A. That is the only time.

(Testimony of George E. Ward.)

Q. The rest of the time you were around the machine-shops? A. Yes, sir.

Q. Now, is it not a fact, Mr. Ward, that you were a high-priced man down there and you were put there as a high-priced man, being a machinist and engineer in charge of that coal-conveyor?

A. Well, I had charge of the vessel, of that boat, but mostly always I was on board of the ship or I was called up, Mr. Stanley, then I would have to go up, that is what I stated to you.

Q. If you were not called up what then?

A. Why, then I remained aboard the ship.

Q. You testified, did you not, Mr. Ward, on the last trial that whether called up or not, if anything happened on the coal conveyor it was your duty to go up and see to it?

A. If the bucket stopped taking coal and I happened to be down in the hold I would wonder what had stopped it, I would naturally walk out of that hold and look up and if there was any of the men up in these towers that I could make a motion to, or ask they would simply tell that their hopper was full, then I would know there was something wrong, and then I would walk up.

Q. I am asking you the simple question, did you testify at the last trial that it was your duty, if anything happened on the coal-conveyor to go up and attend to it? A. If I was called up.

Q. I am asking you if you testified this way?

A. I don't remember exactly what I testified, Mr. Stanley.

(Testimony of George E. Ward.)

Q. Does this really express the truth?

A. I don't know, I told you that I don't remember that. [218—151]

Q. You know the truth now, don't you?

A. Yes, sir.

Q. Was it your duty to go up on that coal-conveyor and attend to anything that was out of order?

A. If I was called up, yes, while a coal-boat was in or if I had been working in the Inter-Island shops and they sent up for me it was my duty to go down.

Q. Is it not a fact that Akina was a foreman down there under you?

A. Mr. Akina was a foreman down there when I was never near the place. I went down there, Judge Stanley, when the coal ship was in.

Q. Is it not a fact that when you were down there at that coal-conveyor that Akina was the boss or foreman under you?

A. He was a foreman on the upper place and if Mr. Gedge told me to tell him anything he would take the word from me.

Q. Can you answer that yes or no and stop quibbling. When you were at the coal-conveyor was Mr. Akina under you?

A. Mr. Akina was under Mr. Gedge.

Q. Was he or was he not under you?

A. If I gave him any order. He was not exactly a boss under me, Mr. Stanley, I was not a boss over him.

Q. Didn't you testify at the last trial, Mr. Ward, that there was a boss or foreman under you at that

(Testimony of George E. Ward.)

coal-conveyor and that was Mr. Akina?

A. Well, he was a foreman there.

Q. I am asking you did you testify that at the last trial?

A. Why, I don't know just exactly whether I testified that Mr. Stanley, if I said that he was under me. If I had been given any orders then I would go and tell Mr. Akina, why then he would do it.

Q. Then Akina got his orders from you, is that right? A. At times.

Q. Now, Mr. Ward, with reference to this cable, you understood when it was introduced that it was introduced merely so that [219—152] the jury could see the manner of the construction of cable, that it was a three-quarter-inch cable, that it was a six-strand 19-wire steel cable, you understood that, didn't you, you understood it was introduced merely for that purpose?

A. Yes, but when I began to explain the difference in this I said then that was a different cable altogether than the other one and I wanted to explain why it was a different cable and I was stopped.

Q. You understood the purpose for which it was introduced was merely to show the jury what a six strand, 19 wire three quarter inch cable was?

A. I understood you when you said that and when I seen you had introduced a left-handed cable I knew it was entirely different from the cable that was in use.

Q. But with the exception of being left-handed, otherwise it is identical with the new cable that was

(Testimony of George E. Ward.)

in use on the coal-conveyor. Is there any other difference between that and a new cable that was in use when you were working there except it is what you call a left-handed cable?

A. Why, I have not counted the wires in that strand, Mr. Stanley, and I am not sure whether there is 19 in there or not.

Q. Is it, with the exception of being a left-handed cable of wire, apparently identical?

A. It is about the same diameter.

Q. Now, you say you got your orders from Mr. Gedge at this coal-conveyor; give us an idea of the nature of those orders.

A. Why, when the coal-boat come in, why, then, I would be sent for to go down there. Mr. Gedge would be there and go aboard the ship and look at the holds. We would ask the captain how many ton was in this hold, how many ton was in that hold, then we would start discharging and without any men.

Q. What?

A. We would start discharging without no men on board the ship in the holds. After the coal got down [220—153] a certain distance, Mr. Gedge would come back there and he would say, put men on tomorrow, or we will put on men at one o'clock, and he would pick out those men and the men would be placed in the hold.

Q. And it took several days, did it not, before the cargo was reduced to such an extent that you needed men in the hold?

A. It all depends on the ship, Mr. Stanley.

(Testimony of George E. Ward.)

Q. Well, why?

A. Why, if it had 'tween decks then only for a day and he would put a few men in the hold.

Q. Now, so far you have told us the nature of Mr. Gedge's orders to you, he would say we will put so many men in the hold, or we will need ten or fifteen men to go to work at seven in the morning or say in the afternoon, that is right? A. Yes.

Q. What other orders did Mr. Gedge give you—you knew Mr. Gedge was neither a machinist or engineer?

A. I don't think he is a machinist or engineer.

Q. You know he is not? A. Yes, I do.

Q. Now, then, what other orders did Mr. Gedge give you as machinist and engineer?

A. We may work that hold that day and then he would say we will move to the next hold.

Q. Any other orders?

A. He would say I am going up to the office, you tell Akina to move that tower, you tell Akina to do this, you tell Akina to do that, all such orders as that he would give me.

Q. Can you give us any idea of any other orders?

A. He would tell me to get out that coal as quick as we can.

Q. As quickly as possible, that was the idea of Mr. Gedge right along to have the vessel discharge as quickly as possible? A. Yes.

Q. To have the work go along as efficiently as possible? [221—154] A. What is that?

Q. Have the work go along, proceed as quickly as

(Testimony of George E. Ward.)

possible? A. Empty them as quickly as possible.

Q. As efficiently as possible; you know what I mean by efficient, that was the idea of Mr. Gedge as secretary and treasurer of this company?

A. If anything happened we would have to see Gedge about it.

Q. I am asking you about what Mr. Gedge would say. He wanted the coal-boats discharged as quickly as possible and said to get the work done as quickly and efficiently as possible?

A. He would not mention them words, quickly or efficiently, he would say get it out as quickly as possible.

Q. And Mr. Gedge knew, did he not, that if there was a bad cable on the track that that would necessarily mean stoppages in the work?

A. Well, he was told on Saturday about there being a defective cable, Mr. Stanley, and I am sure he would know.

Q. Mr. Gedge worked there as secretary and treasurer of the company, and down there even since this coal-conveyor has been erected?

A. Well, he has worked down on that end of the conveyor longer than I have myself. He has been at that coal-conveyor long further than I have been there.

Q. Yes; and now you were down there on these coal vessels I understand from the time that the plant was built up to the time that you were hurt, whenever a coal vessel was in, with the exception of a short time when you were away at the Coast, we

(Testimony of George E. Ward.)

will say from May to September, 1911; that is right, is it? A. That is right.

Q. And don't you know that Mr. Gedge was aware of the fact that if there was a cable in bad condition that that would necessarily mean stoppages and delay with the work?

A. Why, that is what he was there for. We had to take his orders. If he said not to change it we could not change it. [222—155]

Q. You knew he was aware of the fact that if he was using a rotten cable it would mean delay and stoppages in the work?

A. Why he certainly must know it Saturday when he was told about it.

Q. And before that, he had been there for years before that?

A. Why yes, he was down there more than I was.

Q. And he knew when there was a rotten cable there it would necessarily mean delays and stoppages in the work? A. He would know.

Q. Now you say the first time you mentioned the fact of the cable being in bad condition to Mr. Gedge was about a month or three weeks—three weeks or a month prior to your accident, that is right, is it not?

A. Yes.

Q. That is the first time that you mentioned it?

A. About that cable?

Q. About that cable. A. Yes.

Q. And where did you have the conversation with Mr. Gedge? A. At the engine-room.

Q. At the engine-room. And Mr. Gedge went up

(Testimony of George E. Ward.)

to the shops, I understood, and took you down in his automobile?

A. I think he did. I don't know whether he took me down in his automobile or Mr. Kennedy's.

Q. Well, what about and for what purpose did you go down to that cable?

A. Why he told me that he had trouble down there with the cable and wanted me to come down there.

Q. He told you he had trouble with the cable, is that right?

A. He told me that he had trouble about the cable down there and wanted me to come down there.

Q. So that when you went with him your idea was to go down there and tend to the cable?

A. When we went down there I looked at the cable and I looked at the drum. [223—156]

Q. But when Mr. Gedge went for you he told you that there was trouble with the cable? A. Yes.

Q. Did he tell you the nature of the trouble?

A. He told me that it was tangling on the drum.

Q. Is it not a fact, Mr. Ward, that you went down there to attend to the drum?

A. Why he took me down there to see what caused the tangling on the drum.

Q. Is it not a fact that the primary object of your going down there was not to put in a new cable, to suggest a new cable, but was to fix the drum?

A. When I went down there I stood there while it was done, but that could have been done without me, Mr. Stanley.

Q. Was not your object in going down there not to

(Testimony of George E. Ward.)

put in a new cable but to fix the drum?

A. My object was to go down there and see what the matter was, and when I saw what the matter was I told him to put in a new cable and a new drum and he told me to never mind the cable, to put in a new drum.

Q. You testified at the last trial, did you not, Mr. Ward, that you went down there to attend to the drum, and the cable was an afterthought?

A. I might have testified to that, but that was the purpose that I went down there.

Q. To attend to the drum?

A. I don't know whether I testified to that or not; I have not read that thing, Mr. Stanley; I don't know what I testified to there, and if I did say that, it was with reference to the cable and the drum. I am pretty sure that I did mention the remarks I am mentioning now that I told him about. I told him to put in a new cable and new drum.

Q. What was the condition of the cable?

A. The wires were breaking and started sticking out.

Q. To what extent? A. In places.

Q. Right through the length of the cable?

A. No, in places. [224—157] I didn't look at the whole length of the cable, it was at the drum I was looking and down in the engine-room, there is four turns around that drum, and then where it leaves the drum at the top. I could not notice the whole cable.

Q. At that time you had not seen its whole length?

(Testimony of George E. Ward.)

A. No, sir; I had not seen its whole length.

Q. And didn't know its condition?

A. At that spot I knew its condition.

Q. But didn't know the general condition of the cable at that time? A. Not all around the cable.

Q. All you noticed, then, was where the cable went around the drum and you saw wires, little wires sticking out in places?

A. Saw the wires broke, and sticking out.

Q. That is right? A. Yes, that is right.

Q. And that is the only examination you made of the cable at that time?

A. That is the only examination. I told him the condition of the cable.

Q. Told him what?

A. I told him the condition of the cable at that place, that the wires are sticking out, to put in a new cable and new drum.

Q. He could see it? A. He could see that.

Q. Then you just called his attention to the fact that on the drum you could see some little wires sticking out on the cable?

A. Right on the drum, where it leaves the drum to go up to the sheave, too.

Q. Your attention, anyhow, was directed to that in the engine-room where this drum was and all you saw was on the drum at the holes, these other places where it goes through the sheaves, you saw it in some places that little wires were sticking out?

A. Yes, the wires were broken.

Q. And that was the only examination you made

(Testimony of George E. Ward.)
of the cable at that time?

A. Yes, that is all; I didn't go around. [225—
158]

Q. And knew nothing about the rest of the cable?

A. No, sir; I didn't go around it.

Q. And to what extent, Mr. Ward, were these wires sticking out on the drum to where it went through the sheaves?

A. Some of them may be about a quarter of an inch, some may be a half and some may be three-quarters, it all depends.

Q. I am not asking you about how much; I am asking you what you saw.

A. I am telling you what I saw. Some were long, some short.

Q. Some were a quarter of an inch, some maybe half an inch, and some may have been an inch?

A. May have been an inch.

Q. And at the time this portion of the cable was in that condition the company had a spare cable near the engine-house, ready to be put on the conveyor at any moment? A. Yes, sir.

Q. Now, when you speak about these wires sticking out, what do you mean, Mr. Ward; do you mean lying along the main body of the cable or sticking out perpendicularly?

A. Some of them were lying along, some of them were sticking at right angles, some were sticking straight out.

Q. Is it not a fact that with a cable climbing as you say on the drum that these little wires would be

(Testimony of George E. Ward.)

smoothed down the length of the cable and would not be sticking out? A. What is that again?

Q. Is it not a fact that with this cable on the drum that these wires would not be sticking out perpendicularly, but would be worn smooth with the body of the cable?

A. No, the drum would cause them to stick out, too, if they were smooth and happened to get tangled with the wire rope around the drum and when leaving the drum it could not leave because one of the wires—the cable would have hold of that wire and pull it off after [226—159] going around all along the coal-conveyor. Some were sticking out, some were laying at an angle, and all different shapes.

Q. And when the cable would come up through the sheaves on to the drum, it would pass, would it not, over a number of rollers stationed fifty feet or so apart? A. Yes, sir.

Q. And that would smooth out the roughness of the cable, wouldn't it?

A. No, that would cause a great deal of damage to the cable, too. All but two places, Mr. Stanley, they are using iron dollies and instead of the dolly turning it wouldn't turn, it wouldn't revolve, and the cable would wear a groove in there, and that would be cutting the wires, too.

Q. The tension, though, on the cable was such that the cable would wear grooves, would it not, through these little rollers? A. A flat groove.

Q. A flat groove. A groove in—the cable was so taut, and the tension was so great that it would wear

(Testimony of George E. Ward.)

a groove in this little roller, would it not?

A. I didn't say anything about tension; I told you awhile ago that the rope would sag.

Q. But with all your sagging and all your slack, this cable passing over these little rollers would wear a groove in them?

A. Yes, sir; the weight of the cable.

Q. And the cable also did, did it not, wear a groove in the dollies? A. Yes, sir.

Q. And was that occasioned, Mr. Ward, by a condition of slackness or tension of the cable?

A. On those pulleys, by tension.

Q. What is that?

A. On the pulleys that was from the strain on it.

Q. The strain on what?

A. Just the pulley.

Q. In other words it was so taut—of course, not fully taut, but it was so taut that the cable going around on it would wear a groove in the little dolly?

A. Yes, it would wear [227—160] a groove down by the flange.

Q. When the dolly is new, there is no groove, is there? A. No, sir.

Q. I show you this, Mr. Ward, is that a new or old dolly? A. A new pulley.

Q. Being widest at the top part? A. Yes, sir.

Q. And then tapering down towards the flange?

A. Yes, sir.

The COURT.—What you refer to as the dollies are the rollers in the middle of the track?

A. Yes, sir.

(Testimony of George E. Ward.)

Q. And the others are pulleys? A. Yes, sir.

Mr. STANLEY.—And this, Mr. Ward, is a pulley which has been in use, and at the top of the flange there appears the groove worn by the cable, is that right?

A. I don't know whether that has been turned by a lathe, but I don't think that has been worn by a cable. There is no cable down there smooth like that, worn by a cable; that has either been cleaned up by a lathe or something; I have never seen anything like that in all my experience in any kind of a sheave or pulley. The lay of the rope will always lay in these things. You had one a little while ago, the boy brought it up and took it away again.

The COURT.—Which is the upper part of the pulley when the pulley is in place? A. That way.

Q. They set that way, with the open portion of the pulley up? A. Yes, sir.

Q. And the flange downward? A. Yes, sir.

Mr. STANLEY.—I would like to have these marked for identification, the new pulley to be marked 2.

The COURT.—It may be marked as Defendant's Exhibit 2. The second pulley with the groove in it may be marked as Defendant's Exhibit 3 for identification, and the dolly may be marked as Defendant's Exhibit 4. [228—161]

Mr. STANLEY.—That is what you refer to as a dolly, what is referred to as the roller? A. Yes.

Q. And those are grooves worn by the action of the rope? A. Yes.

(Testimony of George E. Ward.)

A JUROR.—Is that iron or steel? (Referring to the roller or dolly.)

A. Those are cast iron, I believe. Have I any right to speak about these dollies?

Mr. DOUTHITT.—Certainly.

A. Why in the first part, we always used iron dollies in that, and iron dollies was discarded and just plain wooden rollers put in place of the iron and that all my time in the coal-conveyor after these had been discarded there were wooden rollers placed, wooden rollers in the dollies. The dolly is called anything that will run either way, riding a rail or rolling about the same as dollies in lumber-yards that they roll lumber on, it is similar to the dolly that is used in lumber-yards that rolls underneath or you turn it upside down and put the timber on and draw the timber and the roller will turn.

The COURT.—Were all the dollies on the coal-conveyor on the 8th day of July fitted with wooden rollers or metal rollers?

A. Most of them were always wooden rollers.

Mr. STANLEY.—All were?

A. Yes, wooden rollers made out of ohia, made out of ohia wood.

Q. All of them?

A. With the exception of two by the scale-house are the only two always remained iron. Those two here were the only two that remained iron because the two wires would keep them turning, whereas the others, a little piece of coal would get in around them, and they would stop and not turn, an iron roller, and the

(Testimony of George E. Ward.)

wood would cause friction enough so that the dust would not interfere with the rolling of the roller, the turning of the roller. [229—162]

Q. Is it not a fact, Mr. Ward, at the time that you were hurt the company was experimenting with wood in the shape of dollies, and that they were partly iron and partly wood on that conveyor?

A. The ones that I can remember is the ones over here on the scale, that they were iron rollers.

Q. How many?

A. There were two, the others were ohia.

Q. Is it not a fact, distributed over the whole length of the conveyor there were iron ones and wooden ones?

A. In my experience, Mr. Stanley, I am telling you that they were replaced by wood.

Q. What do you mean by saying they are mostly wood?

A. The shaft is iron and the framing that holds it together is iron and the roller is wood and is made of this Hawaiian wood ohia.

Q. Is it not a fact, Mr. Ward, calling your attention now to exhibit for identification 3, is it not a fact that the cable did wear a groove in the pulleys similar to that groove shown in exhibit 3?

A. Why, that would wear a groove in these pulleys, Mr. Stanley, but it would show the form of the strands in the pulley. You had one here a little while ago, and I saw the boy packing it out again. If you brought that out before the jury, then they would thoroughly understand what I explained.

(Testimony of George E. Ward.)

Mr. STANLEY.—We packed nothing out.

Mr. HEMENWAY.—That is right, it was taken out.

Mr. STANLEY.—Then I didn't know anything about it.

Mr. HEMENWAY.—It is exactly like this, with the mark of the rope upon it. I will bring it up tomorrow.

Mr. STANLEY.—Except the pulleys that you saw in use—in the pulleys you saw in use, the groove had the mark of the rope on it? A. Yes. [230—163]

Q. Otherwise the groove was similar to that shown by exhibit 3?

A. There was a groove there with the mark of the strands of the wire.

Q. And it was similar to this exhibit; it was marked that way?

A. It was the same shape, about the same height and the same diameter and made in that way the same as that.

Q. I am not talking about the pulley, I am talking about the groove.

A. It was a groove and it had a mark from the impression of the strands of the rope.

Q. And was it a groove similar to that and differing only that it had the mark of the cable on it?

A. I just explained to you that the size and diameter of that pulley was exactly alike and it had groove, but it had the appearance of the strands of the cable in the groove.

Q. I am not asking you about the length, height, or

(Testimony of George E. Ward.)

diameter of the pulley; I am asking you was the groove worn in the pulley similar to that shown upon exhibit 3, except that it had the mark of the cable on it?

A. Similar; do you mean the same, Mr. Stanley, do you mean the same depth, the same width?

Q. Similar as to size and general appearance.

A. Some of them are not quite that deep, but it has the impression of the wire in the groove.

Q. And that groove was caused by the tension and weight of the cable in operation?

A. It was caused, Mr. Stanley, I can plainly show you that why that was caused on the pulleys. With so many cars going towards the coal-yard way and full of coal, each car would average about three ton, empty car and full—empty car and loaded with coal would average maybe a little over three ton and there would be so many loaded cars going and there would be those empty cars coming, this hauling cable had all of the weight to haul, now that is where you got that tension on these pulleys, with all that weight to pull and these little [231—164] pulleys had that strain on.

Q. I am not asking you where this tension came from or anything of that kind while you are traveling around the coal-yard with loaded cars or anything; I am asking you, as a matter of fact, was not the groove worn by the tension of the cable, no matter where it came from? A. Yes, sir.

Q. Now, you speak about the slack of the cable, and you called the Court's attention to the fact that

(Testimony of George E. Ward.)

mauka of the scale-house, little Jimmie, I think you called him, would lift the cable with a hay-hook some two feet and more, and you say that happened you don't know how many times a day; could you give the jury any idea how often that happened during your time that you would see him lift up that slack with the hay-hook?

A. No, I cannot tell you how often, but I have seen it often and I have been up there and the tangle would be there; he would just simply get the wire and shake it and shake it. He would never stoop; he would stand right up straight until that thing came out, then he would drop it.

Q. What I asked you, Mr. Ward, was,—you said this happened or was a daily occurrence; about how often have you seen that in a day?

A. Maybe two or three times a day.

Q. And where would you be when you would see it?

A. I would happen to be up there on top of the coal-conveyor when he would be changing, maybe in around, for instance, when there was anything wrong up there, I would be around and the thing would be started; I would see him changing the wire, and I would see the thing get tangled and he would simply take it and shake it and the thing would come off.

Q. That is not that two or three times a day?

A. Not every day, some days.

Q. That is several times?

A. No, two or three times a day. [232—165]

Q. That you were up on the coal-conveyor and saw it? A. Yes.

(Testimony of George E. Ward.)

Q. What were you doing up on the coal-conveyor?

A. I had been somewhere around on the coal-conveyor.

Q. What had you been doing at the scale-house?

A. There is the step right by where he stands and does that, that is where you go up and down the coal-conveyor.

Q. Your job was down on the coal ship?

A. I had been called up there, Mr. Stanley.

Q. Two or three times a day?

A. Sometimes I would go up there to see how much coal there was at 12 o'clock or a little before twelve I would go up to see how many tons had been taken out and how many tons would be remaining in the hold so that I would know just about how long to work that coal.

Q. In any case you were up there two or three times a day?

A. Sometimes, and sometimes not up there in the whole day.

Q. Is it not a fact, Mr. Ward, that with this tension on the cable going around the pulleys, the tension being sufficient to wear a groove in the cast iron, that these little wires, instead of sticking out perpendicularly to the cable would be worn smooth?

A. They might come up again; they are steel wire.

Q. They would be flattened, would they not? First of all they go around eight pulleys here with this tension and then they go around sixty more pulleys, then they go around the eight over here, making a total of seventy-six, then they go over the rollers at inter-

(Testimony of George E. Ward.)

vals of fifty feet on this twenty-eight hundred feet track?

A. Yes, sir, but then that is a condition about those wires sticking out; if it had to go over these eight first pulleys it would be shoving that way, but when it had to go around the other curve it would be shoving it that way, and that is the way them wires were shoved and made the [233—166] steel cable twist and spring in that fashion.

Q. Then you mean that these little wires here would not be flattened going around that groove?

A. I told you that the flattening was caused by the grips first, then they start breaking and stick out.

Q. And would be held flat would they not going around these pulleys?

A. They were worn flat before they broke loose.

Q. I show you now a pulley which I ask to have marked for identification.

The COURT.—It may be marked for identification as Defendant's Exhibit 5.

Mr. STANLEY.—I show you this pulley which has been marked for identification as Defendant's Exhibit Number 5 and ask you if the groove there at the foot of the pulley is a groove worn by the pulley in use? A. Yes, sir.

Q. This is the pulley I think you said we took out of the courtroom?

A. I don't know whether that is the same one, but it is one like that that I seen going out.

Q. You don't mean to accuse us of doing anything underhanded?

(Testimony of George E. Ward.)

A. No, I don't mean anything about that. I saw it going away and I would like to have it brought back to show the difference between the two pulleys.

Q. I understand on this occasion when you asked Mr. Gedge to replace the drum and the cable, that Mr. Gedge says, the cable is all right, put in a new drum?

A. He said never mind the cable put in a new drum.

Q. What did you say?

A. I had to obey his orders.

Q. Did you say anything?

A. I didn't say anything; I done just as he told me to do.

Q. Then you told Mr. Gedge there should be a new cable and new drum put in? A. Yes, sir.

Q. Mr. Gedge says, never mind the cable to put in a new drum? [234—167] A. Yes, sir.

Q. And that ended it? A. That ended that.

Q. No suggestion from you otherwise, being a machinist and engineer and arguing with Mr. Gedge that he had better do it now and save time or something of that kind?

A. Well, there may have been something about that—

Q. I am asking you.

A. There might have been that; I know when there are two jobs done at once instead of going back a second time and doing it, if we took the drum out and put in the cable we'd be saving the time instead of putting the drum in and coming back again the sec-

(Testimony of George E. Ward.)

ond time and doing the job all over again; that may be what I said to you, Mr. Stanley, that may be what I said to you.

Q. I am getting at your conversation. You said you told Mr. Gedge to put in a new cable and a new drum, and Mr. Gedge says put in the drum, never mind the cable.

A. Mr. Gedge says never mind the cable, put in a new drum.

Q. And that is all?

A. In reference to the cable I guess that is about all.

Q. And you gave no recollection at this time urging Mr. Gedge to put it in, giving him reasons why it should go in or anything of that kind?

A. I told him about this cable, that they had started breaking and started sticking out; I told him that in the first place and he said never mind the cable, put in a new drum, so I did do that.

Q. Is it not a fact that what you had in mind was this: we will take and put in a new cable shortly, say in a month or so; so, while we are putting in a new drum we may as well make one job of it and put in a new cable?

A. What I had in mind, the cable ought to have been renewed. I had in mind the cable ought to be renewed and I told Mr. Gedge about renewing it. He told me not to mind; to put in a new drum.

Q. Didn't you tell Mr. Gedge, Mr. Ward, while we are about [235—168] this job we might as well kill two birds with one stone?

(Testimony of George E. Ward.)

A. I may have; that is a common saying with us.

Q. Did you say that?

A. I could not tell you, that is pretty nearly two years ago. I cannot remember all these things that I said.

Q. Do you remember testifying "I know my exact words to Mr. Gedge were, better kill two birds with one stone" and repeating that to the jury three or four times?

A. I am not reading those words killing two birds with one stone. That would be rather doing the two jobs at once.

Q. You would be taking two bites at a cherry putting in a new cable now and in a couple of weeks or month putting in a new cable, and as we are putting in a new drum better make one job and put in a cable too?

A. Yes, that is what I am calling two birds with one stone.

Q. You didn't mean to say that that cable was dangerous then or unfit for use?

A. I didn't say anything about that cable being dangerous; I said the strands were breaking and coming out.

Q. And that didn't mean when you wanted a new cable put in that it was dangerous and unfit for use?

A. I don't remember now.

Q. What?

A. I don't remember now just exactly what I said.

Q. You don't remember what you thought of it?

A. I just told you that I thought the cable ought to

(Testimony of George E. Ward.)

be renewed and I told him to renew it.

Q. Anyhow it dropped there, did it, and you just went ahead with your orders and put in a new drum?

A. Yes, sir.

Q. And then went back to your shop?

A. Yes, sir.

Q. And when did you next come down to the coal-conveyor?

A. When that coal ship came in. [236—169]

Q. How long before that was it?

A. The boat was alongside the wharf when I got down there.

Q. You had not been down there lately?

A. I had not been down there between the time the drum was put in and that boat was alongside the wharf.

Q. And is it not a fact, Mr. Ward, that when coal vessels are expected that there is a general overhauling of the coal-conveyor made by the company?

A. Well, Akina was told about all that. Sometimes Mr. Gedge would meet me and tell me about there will be a coal boat here pretty soon and that is all.

Q. You mean to say that he would come up to the machine-shop to you and just impart a matter of information, the fact that a coal vessel would be in shortly?

A. No, he would meet me coming or going to work or coming from lunch and he would meet me and he would tell me that. Maybe he was over to shop on other business and he would meet me and tell me we

(Testimony of George E. Ward.)

expect a coal vessel pretty soon. That is all.

Q. Didn't you receive orders whenever a coal vessel was expected to do down there and overhaul the thing and see that it was put in shape?

A. Why, Akina done all that work.

Q. I am asking you, did you?

A. I told you no. Akina did that work unless there was something wrong about the engine and I was notified at the machine-shop and I was told to go down there and I would go down, I had to go down.

Q. Before a coal vessel came in, was it not the fact that you would go down there and generally overhaul the machinery and see that it was in proper working order by the time the vessel arrived?

A. The engine?

Q. The coal-conveyor?

A. The engine, yes. Sometimes I would go down on the engines and turn them over and see that they were all right; that is, the engines—the engine. [237—170]

Q. You limit your authority or your discretion to the engines?

A. If there was anything wrong I would have to make a complaint about them and then I was told to go ahead and I would go ahead.

Q. But you would go down before the coal vessel would come in and overhaul the engines and see that they were in proper shape?

A. I would if I was told to do so, if anything was the matter with the brake or anything. They didn't

(Testimony of George E. Ward.)

want the men monkeying with this, they would growl and they would tell me to go down.

Q. Did you as a matter of fact go down there on to that coal-conveyor and overhaul the engines to see that they were in proper shape before the coal vessel would come in?

A. Mr. Stanley, I have told you now about four or five times if I was told to do so I would go down.

Q. Were you told to do so?

A. When I was told I did do down.

Q. Is it not a fact that you were told on every occasion where two coal vessels would come in you had better go down and overhaul the conveyor and see that it is in shape?

A. No, not on every occasion. The only time I remember was about a brake and I was sent down to see about it.

Q. You testified at the last trial that you remembered two or three occasions that you went down and generally overhauled that coal-conveyor, did you not?

A. I did not generally overhaul the coal-conveyor. I did whenever they told me to, then I went down.

Q. I am asking you did you testify so in the last trial?

Mr. DOUTHITT.—He did not so testify.

Mr. STANLEY.—I will drop that for the present.

Q. You knew, did you not, Mr. Ward, that prior to your accident that the company expected three coal ships to come in in [238—171] rapid succession towards the end of June and beginning of July?

A. I might have been told that. I knew that there was two boats in just the time before I was injured

(Testimony of George E. Ward.)

one right after the other.

Q. And your best recollection is that you were told that the company expected three vessels in rapid succession towards the end of June and beginning of July?

A. I don't remember; I might have been told.

Q. You may have been told so?

A. I may have been told.

Q. What is your best recollection now?

A. That there was two boats there.

Q. I am not asking about the two boats there, but about your information that these boats would be coming in?

A. I told you I did not recollect but to my best recollection now I just remember now if there was two boats there before I was hurt.

The further hearing was continued until tomorrow at 8:30 A. M. [239—172]

Tuesday June 2d, 1914.

Cross-examination of GEORGE E. WARD resumed.

Mr. STANLEY.—You testified yesterday, Mr. Ward, that about the time that you were hurt that the Inter-Island Company was experimenting with wooden dollies instead of cast iron ones?

A. At the time of my accident, did you say?

Q. Prior to your accident.

A. Before my accident.

Q. For instance, on the day of your accident what were they using?

A. They were using all the wooden rollers excepting these two.

(Testimony of George E. Ward.)

Q. Is it not a fact that the tension on that cable was such, Mr. Ward, that grooves were worn right in those rollers?

A. Yes, sir, there are places where grooves wear.

Q. Is not that the general condition, Mr. Ward?

A. That would be the condition on any roller.

Q. Was not that the condition on this conveyor, the whole conveyor?

A. I had not been all over that conveyor, Mr. Stanley.

Q. The part that you did notice?

A. The places I was in I noticed grooves in the rollers.

Q. And what kind of wood was used for those rollers? A. Ohia.

Q. And do you know, Mr. Ward, having been practically—I think you were born in this country, were you? A. No.

Q. You came here when you were about thirteen, did you not? A. About that, yes. [251—173]

Q. And lived here ever since? You know, do you not, that ohia is recognized as being one of the hardest woods in this territory?

A. It is hard wood; I don't know whether it is the hardest or not.

Q. I say one of the hardest.

A. Yes, one of the hardest.

Q. You know that it is used for ties down here by the railway company, the ties on their track whenever they can get them?

A. I have read in the newspaper about the ohia

(Testimony of George E. Ward.)

being used for ties.

Q. Do you recognize that as being one of the dollies used on the coal-conveyor?

A. Yes, that had been used on the coal-conveyor.

Mr. STANLEY.—I ask that that be marked for identification if the court please.

The COURT.—It may be marked for identification as Defendant's Exhibit 6.

Mr. STANLEY.—And also if you recognize this as being one of the dollies being used on the coal-conveyor?

A. Yes, it looks as if it had been used on the coal-conveyor.

Q. And do you recognize or will you say that that represents the groove that was made by this slack cable or whatever you call it, the slack cable on those dollies?

A. Why, I have not seen them all so deep as that, Mr. Stanley.

Q. Have you seen any as deep as that?

A. What is that again?

Q. Have you seen any as deep as that?

A. I know they were taken out and new ones put in, they would always have plenty of spare ones to renew with.

Q. Have you seen them with grooves as deep as that?

A. I don't remember; I have seen several deep ones.

Q. Those are something like three-quarters of an inch in [252—174] depth, are they not?

(Testimony of George E. Ward.)

A. Somewhere around that about three-quarters of an inch in depth.

Q. Is this the general appearance of the grooves made in dollies on the coal-conveyor?

A. What I saw Akina before he got them that far would take them out.

Q. About how far would the groove have been worn?

A. Similar to this and then there would be two or three grooves in places on one, they would be a groove here and a groove there.

Q. So that this cable was eating grooves and forcing grooves right into these hard wooden dollies?

A. They would make a groove in anything.

Q. And that was caused, was it not, Mr. Ward, by the tension and weight of the cable passing over the dollies?

A. No, it was caused by the weight of the cable on it, not by the tension, Mr. Stanley.

Q. The weight of the cable? A. Yes, sir.

Q. Just laying the heavy cable,—resting on it, the weight of the cable, or the motion?

A. The weight of the cable resting on the roller.

Q. Now, Mr. Ward, you are not fooling?

A. No, I am not fooling. Let me explain it to you. You ask me these questions so many ways and I try hard to explain it, as hard as I can. The tension that you speak of, Judge Stanley, is between two cars, and with that roller so low that she would not touch the cable at all, and the sagging of the cable is what the rollers take up, the sagging of the cable, then that

(Testimony of George E. Ward.)

is the weight that I am speaking of.

Q. And you mean, then, that the mere fact of the cable resting on these and on the cast iron rollers when they are in use would cause this groove?

A. And friction.

Q. And friction gained how?

A. Why, by starting up [253—175] the cable. Before that roller would get started, why there would be a little slip by that cable that caused friction and wear.

Q. And by that—

A. One minute, Mr. Stanley. And then when the engine is instantly stopped and cable stopped these rollers will still revolve a little bit and cause friction and wear.

Q. You say there would be a little slip of the cable; you mean there would be a little motion there over the dollies or over the pulleys?

A. Before it got its proper speed.

Q. And with the weight of the whole cable behind them, this heavy cable moving that would cause the rope to slip and groove?

A. Yes, before you got the roller in motion, up to speed. After it picked up its speed it would continue on that speed.

Q. Now, your immediate boss down at the Inter-Island for a number of years prior to your accident was Mr. Muirhead, was it not?

A. What is that again, please?

Q. Your immediate boss, the man immediately over you down at the Inter-Island for some years

(Testimony of George E. Ward.)

prior to your accident was Mr. Muirhead, was he not?

A. When I was in the shop, yes, sir.

Q. Did you report to Mr. Muirhead that you had suggested to Mr. Gedge the putting in of a new cable early in June and that Mr. Gedge refused to do it?

A. No, sir, I don't remember of anything about a cable to Mr. Muirhead.

Q. What?

A. I don't think I ever spoke about a cable to Mr. Muirhead.

Q. So far as you know now you made no report of that matter to Mr. Muirhead?

A. What is the date again, please, in June, what year?

Q. In June, 1912 was it not, that you told Mr. Gedge that you felt there should be a new cable put in? Now I am asking [254—176] you if it is not a fact according to your present recollection that you never reported to Mr. Muirhead the fact that Mr. Gedge would not have a new cable installed?

A. I don't remember saying anything to Mr. Muirhead. The fact of the matter is Mr. Muirhead had nothing to do with the coal-conveyor than I had; it was Mr. Gedge, and when he refused why it was not my idea of ever going and talking to anybody because he is the man. Mr. Muirhead had nothing at all to do with that conveyor that I remember.

Q. Mr. Muirhead is the chief engineer for the Inter-Island Company?

A. Yes, he is the superintending engineer.

Q. Superintending engineer of that company?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. Now, then, on this Saturday prior to your accident that you were working down in the hold of the coal vessel and you found that something was wrong on the conveyor you went up there, is that so?

A. I told you that I was working down in the hold of the ship and I noticed the buckets had not gone out and I came out of the hold to see what was the matter, to see whether the man told me he had a full hopper and I went up to see what was the matter, I could not see no men around the towers then and that naturally told me there was something wrong somewhere.

Q. How was your attention first directed to the fact that there was something wrong?

A. I just told you that I was down in the hold and didn't notice the buckets taking no coal up.

Q. Didn't notice the buckets? And the buckets come down, do they not, when you start unloading the ship and the holds are pretty well full, nearly full, they come down, do they not, at the rate of about—it takes about twenty-five seconds, does it not, for the bucket to come down to the coal, go back, for the discharge and get back to get coal?

A. I don't know, I never timed it. [255—177]

Q. You have been there year in and year out, I will ask you if you think that statement would be pretty reasonable that it would take from twenty-five to thirty seconds for the bucket to land in the hold, grab its load of coal, discharge in the tower and get back to the hold?

(Testimony of George E. Ward.)

A. I never timed it in seconds, never timed it at all.

Q. It would take about a half a minute, wouldn't it?

A. Really about half a minute, I guess, to go down and back again.

Q. And when you got down to the bottom of the hold it takes how long when you have got to do a little shovelling and you have got these men shovelling coal in the vicinity of the bucket; it takes about forty-five minutes for the round trip, does it not—forty-five seconds?

A. I don't know the length of time it took, I do know that the deeper you get in the hold the longer it will take a bucket to get up and down because it has got a little further distance to travel.

Q. And from your experience there would you say from forty-five seconds to a minute would be about the time it takes for the round trip of this bucket?

A. I never timed any of those buckets by seconds, I just told you I never timed those buckets.

Q. I am not asking you to give us the seconds because you say you don't know. I am asking you from your experience there as a matter of fact, for you are the superintendent, if one minute would be sufficient to cover the round trip necessary when you are going up and back to the hold of the vessel?

A. Yes, from the bottom of the ship to dump and be back again in one minute, somewhere around there.

(Testimony of George E. Ward.)

Q. Now, then, you noticed, as I understand you, on the coal vessel, that the bucket was not coming up?

A. The bucket got [256—178] down in the hold and did not go up.

Q. Now, how long had you observed that condition before you went up on the conveyor?

A. Why, the men were shoveling there and I did not see the bucket come down so I naturally looked up from the hold and I can't see anything there but these booms, that is all I can see when I am down in the hold, that is all I can see are these booms crossing the hatch so I have to get out to see what is the matter and I climbed to the deck to look out as the men on top tells me the hopper is full—

Q. You have not answered my question. My question is how long had you been down in the hold and observed that the buckets were not coming up?

A. Why, I worked down there all that morning.

Q. Were the buckets out of operation, say thirty minutes?

A. You just asked me the question how long I have been down in the hold and I answered you that I have been working on that ship all that morning.

Q. How long had these buckets been idle, not traveling, when you observed that condition?

A. Oh, I don't know, Mr. Stanley. I have to look around the hold to see whether they are shoveling and maybe never noticed the bucket or anything, and not waiting I did not notice the bucket come

(Testimony of George E. Ward.)

down. I can't tell you how long that was, I can't tell you to a second or minute, my mind is too much occupied on other things.

Q. On this case, for instance. You were down in the hold and you expect that bucket to come down under the worst circumstance, if you are down near the bottom, the coal is down near the bottom, you expect that bucket to get down there once a minute. Now, how long—I am trying to get some idea of how long this condition had been going on that those buckets were not coming down for loading one a minute before you went up to [257—179] the conveyor?

A. There is different conditions; if the hold had been about half empty so that you had to shovel the coal away from the bulkhead and maybe after shoveling for half an hour or so the bucket would go down there and pick up those two loads, then the bucket wouldn't be down for another half an hour until there was sufficient in your skin to get the bucket full, and there you have all those conditions to look at.

Q. Then you don't know whether it is a half an hour, a quarter of an hour or ten minutes or five minutes that you noticed these buckets were not in operation? A. I never timed it.

Q. You don't know anything about it?

A. I never timed it.

Q. Now, then, when you did notice that these buckets that were supposed to go up and down with this speed were not running, you left the boat and

(Testimony of George E. Ward.)

came up on the coal-conveyor?

A. I left the hold and came out on the deck and the men told me that the hopper was full. I asked him and he sung out that the hopper was full and I went up and could not see no men around here and no cars around here and so I went up.

Q. You told us that now several times?

A. You asked me.

Q. You came up here and when you arrived you found that the cable had been put back on the trolleys, is that right?

A. When I got there the cable had been put on the pulleys.

Q. And the engine had already been started up again? A. And the engine was running.

Q. You don't know, Mr. Ward, I take it, how long it had taken the employees up here to restore the cable to the pulleys?

A. I had not saw that cable off, Mr. Stanley, I told you that just now, and I never asked those men about the time but I stood there and watched the thing running. [258—180]

Q. You know, do you not, that on that occasion the men stopped the engine first down mauka by the scale-house, raised the weight at the drum or rolled the drum over, took the grips off the cars and put it back by hand?

A. I told you I didn't know, the thing was on and running when I got there. I didn't see them raise the box and I didn't see them lowering the box.

Q. Now, the greater the number of pulleys that the

(Testimony of George E. Ward.)

cable is off, the greater the difficulty there is about getting it back?

A. The greater number, it all depends on the condition of the cable, the weight, the conditions. Well, if it had come off the whole complete circle, why, yes, there is more trouble sure than if it came two-thirds of that circle.

Q. Or if it came one-half?

A. It depends on how the rope is.

Q. And if it is two-thirds why it is a matter of more difficulty?

A. You have a little bit more cable to put on than if you had one-quarter.

Q. And it is a matter of greater difficulty to get back?

A. I just told you it depends on the cable, Mr. Stanley.

Q. Now, with the cable off, we will say, practically thirty of the makai pulleys, as you have illustrated it, was on the Saturday—

A. That I illustrated, I didn't illustrate anything like that, Mr. Stanley.

Q. Didn't you?

A. You never asked me that question.

Q. But you recognize if the cable is off thirty pulleys, we will say, from the mauka one of this bunch of sixty right away around to almost the head of the coal-conveyor, the makai end, that there is very much greater difficulty to get it back than if it was off four of the set of eight?

A. It depends on the condition of the cable, Mr.

(Testimony of George E. Ward.)

Stanley. If you have sufficient slack there why you can put it back just the same if you put it [259—181] back on forty or sixty.

Q. The way you say you get the slack is by the momentum of the cars? A. Yes, sir.

Q. Or by pulling it around the whole conveyor where you have been going so often in this case and taking it up every hundred or two hundred feet?

A. If you have to do that then you have to pack that cable all around starting here from the scale-house and packing it along in this way two hundred feet until you get it where it is wanted.

Q. Did you ever do that, Mr. Ward?

A. At the coal-yard I had to do that.

Q. Did you ever, Mr. Ward, travel around this 2800 feet of cable, pulling it a hundred feet at a time until you got the slack where you wanted it?

A. At the coal-yard we had to do that.

Q. Did you ever travel around this coal-conveyor packing this cable by that method until you got the slack where you wanted it?

A. When it is in the coal-yard, we had to do that, Judge Stanley.

Q. How often did you do that?

A. How often did I do that?

Q. Yes.

A. I was down there when it was done, I don't know just exactly how often, maybe once or twice, maybe, in my time.

Q. Maybe once or twice in your time?

A. Yes, sir.

(Testimony of George E. Ward.)

Q. In your four years of continuous service with the coal-conveyor?

A. I cannot remember the number of times in them four years.

Q. That is what I have asked you, how often you seen it done?

A. I don't know, Mr. Stanley, but I know two or maybe three instances that I have saw it done.
[260—182]

Q. You said once or twice a minute ago, why do you change to three?

A. Take it once or twice, I cannot remember the number exactly I told you.

Q. Go back to once or twice, now, that you remember, Mr. Ward, and relate who was there when it was done—can you give us an instance when that was done, one of the instances when it was done in the fashion you have described?

A. Why, one of the instances it was done, it was done by the coal packing up there, that threw the car off the track and threw it entirely off that curve there. Mr. Gedge was there and saw it done himself at that time and I think that the other time Mr. Gedge was there and saw it done. I am sure that Mr. Gedge was there at them two times and saw that done.

Q. What two times?

A. I can't tell you exactly, I didn't keep dates on times and things like that, I only remember them things, Mr. Stanley, that is what I am telling you.

Q. Once or twice?

(Testimony of George E. Ward.)

A. Maybe twice, once or twice, yes.

Q. Was it twice? A. Twice, yes.

Q. Is it not a fact, Mr. Ward, that the only time that was ever found necessary to be done was on the occasion when a car was derailed going around this mauka curve leading over to the coal-yard, the car was derailed and thrown completely off into the harbor? A. I remember that now, Mr. Stanley.

Q. You remember that now?

A. Yes, sir, that will be the third instance now, I remember that.

Q. That is the third time?

A. Yes. I said to you a little while ago, two or three times. I didn't keep tab on these times but I remember now it went completely off, the car and all.

Q. Went completely off the car and all into the harbor? A. Down into the slip, yes. [261—183]

Q. And derailed several other cars?

A. What is that again?

Q. And derailed several other cars?

A. No, no, I didn't say that it derailed several other cars.

Q. I am asking you, didn't it derail several other cars?

A. I am telling you about the car going off the track, the whole thing went off the track, took that car, threw the car and all went off the track. I didn't say several cars.

Q. I am asking didn't it, as a matter of fact, when the car was derailed, being attached to this thing

(Testimony of George E. Ward.)

below the car, it was attached to the cable, was it not? A. The grip was attached.

Q. The car was attached to the cable by the grip?

A. Yes. It was a loaded car.

Q. The car was thrown completely off the conveyor into the water, wasn't it? A. Yes, sir.

Q. That took the cable off, too, didn't it? e

A. It took the car. One thing, the grip broke and let the car go and there was no more car on that when we saw it.

Q. And the cable was generally misplaced by that car going over?

A. Now, I will try to explain—

Q. Answer that question.

A. I will answer you if you just give me a chance. I am trying hard to explain to you and I am pretty sure you understand, too. This across here is only about a quarter of a circle, there is about ninety degrees on the turn, which would be a quarter of a circle pretty nearly here, similar to that, and this car opened up and let the whole thing right out of the car and the coal ran in under the car, the gates had opened and the coal ran under the car and lifted the complete car off the track, cable and all, and she swung this way clean out. The other cars were a great distance off and the cable—the grip was not strong enough, being [262—184] made of castings was not strong enough to hold the weight of that car, so the car went across into the water and the cable was laying like this. Now, is that plain?

Q. Now, the cable was laying here hanging down

(Testimony of George E. Ward.)

in a sag by the coal-conveyor?

A. Sagging down there.

Q. Sagging down over the side of the coal-conveyor towards the water? A. Yes.

Q. And is it not a fact that having taken the cable off the track that several other cars were derailed by the fact that this cable did leave the track and went down near the water?

A. I just told you how it left the track. I have never said anything about several cars. I have answered that two or three times.

Q. You first started to tell us about the car being derailed on one of the other occasions that you noticed, tell us about that instance.

A. Over in the coal-yard.

Q. What happened there?

A. The coal had packed up there, it got over the top of the track and derailed the car and that was the cause of the cable coming off on the mauka end.

Q. What happened to the car at that time?

A. It came off the track.

Q. And the cable came off too?

A. The cable came off that circle there.

Q. And pulled the thing down at that circle right off?

A. Right off the track like that (illustrating on model).

Q. Going right down in this way?

A. Yes, going right down this way like that and the car was hanging over like that on the strand of the cable, hanging onto it like that right up against

(Testimony of George E. Ward.)

the post similar to that.

Q. At the mauka end?

A. In the coal-yard, yes.

Q. Pretty generally off the track?

A. Pretty generally [263—185] off the track.

The momentum of these empty cars takes up any slack that it receives there at that end.

Q. At the coal-yard?

A. At the coal-yard. The car is going this way for instance to take the coal and place it on the wharf, the cars is going, this was, an empty car, is going away and when you stop the engine the loaded cars will stop here and the momentum of the empty cars takes up all the slack away from this place, will not allow any slack there. And it is quite different when you get on this end and have all the cars in motion away back of this place and then the momentum of the car gives you all the slack at this place.

Q. These are loaded cars going this way?

A. In the coal-yard.

A JUROR.—And that will give you slack?

A. Yes, and if a car came off and dragged along you'd see the marks of the car as it went bump, bump, bump, bump, until it got over here and this cable was still holding and it would continue over. This one instance that I am speaking of at the coal-yard that we had to go all around to get that slack as that slack had already been taken up, and another thing is in regard to the coal-yard. The difference of the coal-yard to the end of the wharf, the end is so far away from the

(Testimony of George E. Ward.)

workmen when the thing does happen like that it is not seen until one of the men blows a whistle to stop the engine, and the engine is still going and the engine has taken all the slack and the thing is continued until you stop the engine.

Q. Is that the coal-yard end?

A. At the coal-yard end whereas at this makai end the men are there all the time and they would say stop the engine.

Q. And that is the thing they do when they are right down here and see the cable come off the pulleys, they stop it and it is stopped?

A. They call Akina, and Akina is the man that [264—186] gives the orders to stop, I have told you that many times.

Q. Do you mean to tell us, Mr. Ward, that the men down here do not stop it or order it stopped themselves?

A. If Akina is not there they will do it and if I am not there they will do it, Judge Stanley.

Q. And if they see Mr. Akina a hundred yards down they will not give the order to stop, they will wait until he comes up here and then say stop, is that what you mean? A. Yes, they will call him.

Q. And then wait until he travels up this hundred yards to see it and then it is stopped?

A. Hundred yards, no.

Q. How far is it from the end of this cable to the scale-house? A. To the scale-house?

Q. Yes.

(Testimony of George E. Ward.)

A. That is about a hundred yards, three hundred feet.

Q. And do you want to tell this jury that if they saw him a hundred yards away up at the scale-house then they would merely call him and wait until he comes up here to see it is off and then stop it?

A. They will holler out in Hawaiian "E hemo ka cable," and if he heard that very likely he will stop the cable himself.

Q. Then they don't wait for him to get up, but seeing him down there they yell, stop the engine?

A. He goes down there—stops the engine and goes down there and examines it.

Q. And they yell to him what occurred from there?

A. Yes, they sing out to him hemo ka cable, or something like that.

Q. And don't wait, the engine is not allowed to run from the time that Mr. Akina is walking this hundred yards—

A. It will continue to run if he don't stop it, but I am telling you he [265—187] will stop it and then come down and see.

Q. He will stop it if he is there?

A. Yes, and if he is not there the men will. At a time when he is away over in the coal-yard they could not sing out to him E hemo ka cable because they could not see him and he could not hear them either.

Q. Little Jimmie, that you talked about was stationed there within a few feet of this attachment to

(Testimony of George E. Ward.)

the throttle? A. Yes.

Q. With instructions when he heard the cable was off to immediately turn off the engine, stop the engine?

A. If Akina was not there he would do that, yes.

Q. Now, on the Saturday you came up here and the thing had started running again and you noticed the thing was climbing? A. Yes, sir.

Q. You have testified yesterday, did you not, Mr. Ward, that prior to that Saturday you had not seen the cable off the makai end of this conveyer?

A. No, sir, I do not ever remember seeing a cable come off that makai end.

Q. You also testified, Mr. Ward, that a new cable or a cable that was not worn out would not come off this makai end?

A. I testified I never saw any cable come off.

Q. Didn't you testify that a new cable would not come off?

A. A new cable would not come off that end, Judge Stanley.

Q. How do you know?

A. Because I know from experience down there, I never saw one come off.

Q. They don't always now use a new cable do they—when have they put in a new cable?

A. When did I see the new cable?

Q. You have seen a new cable there in six months, you say?

A. I have seen a cable there in six months.

(Testimony of George E. Ward.)

Q. And you have never seen it come off?

A. No, sir, I never seen that cable come off.

Q. How do you know that that cable never came off?

A. Because I never seen it come off, and I know that they are not claiming that there is an obstruction there for to throw the thing off.

Q. Now, I understand this Saturday after you had been working there for four years that you went up there and for the first time tried to find *at* what made that cable come off, is that right?

A. I stood there to watch and see what made that cable come off.

Q. But on this time the first time after your four years of experience you went down there and tried to find out what made the cable come off, is that right?

A. They told me the cable had been off and I stood there to see what made it come off and I saw the thing climbing.

Q. Yes, but from the time that you erected this conveyor up to the Saturday before you were hurt you had never found out that a rotten cable or old cable would climb?

Objected to.

Q. Did you ever see a rotten cable there?

A. No, sir, that, Mr. Stanley, that is the first cable I ever saw in that condition in the coal-conveyor.

Q. I am not asking about this particular rotten condition, I am asking did you ever see a rotten cable in use on this coal-conveyor, a cable which had

(Testimony of George E. Ward.)

been in use say seven months, a cable in the same condition that this cable was?

Objected to.

Mr. STANLEY.—I am asking about a cable that had been broken, worn.

Q. Worn with little wires broken? [267—189]

A. No, I never saw one like that, in that condition, that is the first time I ever saw such a rough cable on the conveyor. I saw cables, Mr. Stanley, that had been worn and there had been no wires broken, it had been worn off flat from friction and wear and from the grips and it had been worn down flat, the little wires, nineteen wires, had been worn down flat but they had not any of them broken loose away and stuck out.

Q. None of them, for instance, cracked?

A. Not as I noticed, no cracks.

Q. None of them cracked?

A. Only the day they were putting in the drum.

Q. The previous cables, have you ever seen any of these cables crack after seven or eight months?

A. I have never saw a cable, Judge Stanley, in bad condition like that.

Q. You are dodging the question again. Have you ever seen a cable similar to this one which had little wires on it cracked?

A. No, I have never noticed.

Q. And you do know don't you that what causes the cracking of the cable is the grip of the car where the cable passes through, the shoe of the car?

(Testimony of George E. Ward.)

A. I know that is the cause of the wear of the cable.

Q. And the cracking then comes in the little wire from the clamping on the cable?

A. There is different conditions about a wire breaking, you can break a perfectly new wire by constantly bending it, that will break a wire that has never been used before, especially steel, it gets crystallized and snaps although never bent before, even on a wire cable where there is no grips that constant wearing and tearing of the cables, a cable will break by constant bending going around sheaves or going around curves and constant bending backwards and forwards and will [268—190] break wires, often break wires that have never been worn at any time. You can take a wire, Mr. Stanley, with your own hands, a brand new wire right from the manufacturing place and you constantly bend that wire and you can break it.

Q. Well, it can break as a matter of fact. We don't want a thesis on how you can break wires. You want to leave your statement to the jury now that never before on no other cable save this one by which you were hurt or say you were hurt have you ever seen any broken wires of cracked wires; if that is so, leave it?

Mr. DOUTHITT.—That is correct, is it?

A. That is correct, I have answered that two or three times.

Mr. STANLEY.—And on no occasion prior to this Saturday before you were hurt had you found

(Testimony of George E. Ward.)

out that the cable would leave the trolleys, a cable would leave the pulleys on account of its roughened condition?

A. Ask that question again, Judge Stanley?

Q. On no occasion prior to Saturday, the Saturday before you were hurt, had you ever noticed the case of a cable coming off at any time say on account of its roughened condition?

A. I just told that I never saw a cable coming off at the makai end.

Q. Then you decided on Saturday that that was the cause?

A. Why, I stood there and watched because I had never seen a cable come off there before and I stood there and watched while the cable was in motion and I noticed it climbing and dropping on those pulleys.

Q. I call your attention to Exhibit 5 for identification and ask you when you saw this—when you went down there was the cable at times in a groove shown on the pulley? [269—191]

A. At times it would be in the groove and then it would climb and go down again.

Q. How high would it climb?

A. Just like that (illustrating on Exhibit 5).

Q. Stop when you get to the height?

A. About that high.

Q. Do you mean within a half an inch or an inch of the top of the pulley?

A. About that, I didn't measure it, I just seen it going up and down. It would run for awhile I remember and not climb and all at once it would

(Testimony of George E. Ward.)

climb and down again.

Q. You never saw it come off?

A. No, sir, I never saw it come off.

Q. On which of the pulleys was it that you saw that action, can you show us here? A. Yes, sir.

Q. Show us.

A. Here is where I was watching and I saw it there.

Q. Raising there, the cable raising up and down?

A. Yes, I could see the cable raising up and down.

Q. These ones over here? A. Yes.

Q. You were watching these? A. Yes, sir.

Q. And you were standing right here?

A. Yes, sir.

Q. And the cable was along on the Ewa side in the groove of these pulleys and you would occasionally see it raising on the outside and dropping down on the pulleys?

A. It would raise up and drop down again, raise up and drop down again.

Q. And how long did you stay there, Mr. Ward?

A. I don't know, maybe about five or ten minutes and went away and continued on my work.

Q. And the cable was in operation at that time?
[270—192]

A. The cable was running at that time.

Q. And you were loading or unloading—unloading, I guess?

A. Unloading, the cars was running.

Q. The cars were running? A. Yes, sir.

Q. Is it not a fact that when the cars are running

(Testimony of George E. Ward.)

that the shoe of the car which holds the cable will itself raise that cable towards the stop of the pulley?

A. Why, it raises it a little bit just so as the shoe will clear the flange.

Q. Is it not a fact that the shoe itself is almost on a level with the top of the pulley?

A. The shoe itself?

Q. Yes? A. The top of the shoe?

Q. Yes.

A. The top of the shoe might be of the same height as the top of the pulley, but where the cable rests in is not.

Q. No, but it is brought very near the top of the pulleys, is it not?

A. I told you that where the cable rests in—

Q. In the shoe? A. In the shoe.

Q. The grip?

A. Yes, that is not nowhere near the top.

Q. The top?

A. The top of the shoe will come to that but there is a groove in there or a slot that the cable fills in.

Q. What is the depth of that shoe?

A. About two and half inches, then the cable.

Q. Then you have got the cable?

A. The cable is laying in about that condition, you only clear the distance of the shoe so that shoe won't ride on the flange.

Q. Then you noticed it and you made up your mind that that was the cause of the cable coming off, did you?

A. I saw the cause of the cable coming off, I saw

(Testimony of George E. Ward.)

what made that cable come off. [271—193]

Q. And you noticed also did you, Mr. Ward—I will ask you did you notice anything else besides the cable rising and falling on these pulleys over here?

A. Yes, I noticed the condition of the cable.

Q. Did you notice any other movement of the cable?

A. I told you that I saw it going up and dropping down.

Q. Did you notice any other movement?

A. No, sir, I noticed no other movement only going—that it was going ahead in the usual way, noticed that the engine was running, I seen that.

Q. Did you notice, for instance, that the wires that were sticking out on this cable were keeping the cable away from the pulleys?

A. Why, that cable turns, always turning one way or the other, it never stands still, it is always turning one way or the other, first it is turning to the right and then turning to the left, not all the way around, but it is moving.

Q. It has got a rotary motion?

A. A rotary motion, yes.

Q. Something like a—

A. Then these little wires would interfere with this groove and catch on the groove and lift it out of the groove that was the cause of the climbing.

Q. Yes, but did you notice that on account of these projections and wires about an inch long that the projections kept the cable away from the pulley?

A. It was climbing, I noticed, for instance, the

(Testimony of George E. Ward.)

cable was coming along and the wire was sticking out of the cable and was sticking there and it would keep it out of the groove and it would climb then down again and the same thing would come along again when the wires would stick on one of the pulleys and naturally climb.

Q. Did you notice one of those quarter-inch projections or [272—194] half-inch projections keep the thing away from the trolley?

A. It was the turning, caused by the wires sticking out, Mr. Stanley.

Q. And those were not flattened down by going around these curves, those wires?

A. They stuck out in all directions.

Q. Now, then, you say after you observed this you saw Mr. Gedge and you spoke to Mr. Gedge later. About what time of the day was it that you made these observations?

A. It was sometime in the morning.

Q. About when?

A. Oh, I cannot exactly tell you, it may be around ten somewhere, around that time anyhow.

Q. Was it somewhere around ten?

A. It was before the noon hour.

Q. That is all that you can say?

A. That is all that I can say, I kept no time.

Q. It may have been seven o'clock in the morning, ten o'clock or eleven?

A. It was after seven, around ten o'clock somewhere in the forenoon.

Q. Where did you see Mr. Gedge?

(Testimony of George E. Ward.)

A. On board ship.

Q. What time did you see him?

A. I think that was when he came down and took the forenoon or maybe after one o'clock. I saw him on board the ship, I am not exactly sure of the time.

Q. You are not sure of that?

A. It was around the noon hour, either before or after noon.

Q. Somewhere around there? A. Yes.

Mr. DOUTHITT.—By that you mean the noon hour?

A. Yes, around the noon hour.

Mr. STANLEY.—Who was present when you had this conversation with Gedge?

A. I do not know.

Q. Was anybody present?

A. I do not know. The sailors were all around the decks and one thing and another, I [273—195] didn't know any there, I don't know if there was anyone there. I didn't look around. I know there was none of my men there because they were down in the hold. I don't know if there was anybody else around there.

Q. What did you tell Mr. Gedge?

A. I told him about the bad condition of the cable, that it was rising and coming off and that we would have to have a new one.

Q. And what did Mr. Gedge say?

A. He said all right, he would put a new one in and I relied upon it and that is all the conversation

(Testimony of George E. Ward.)

there was about the new one.

Q. You didn't tell him you depended on that?

A. No, sir. I relied on it. I didn't tell him anything more about it, there was no other conversation about the cable.

Q. Did he say when he would put the new one in?

A. No, he didn't say when. He said he would put it in.

Q. That is all?

A. I knew it was Saturday and he had Sunday to put it in, he knows that as well as I do, he has the charge of the place.

Q. Mr. Gedge didn't say anything about it being Saturday or Sunday, but just said he would put it in?

A. Yes, that is all, I never asked him no more questions.

Q. At the time this car came off at the mauka curve, the cable as I understand left the trolleys, the cable? A. Yes, sir.

Q. The cable with the car on it left the trolleys and sprung off the track.

A. Yes, car and all went over.

Q. The cable when it left the trolleys or sprung outwards or towards the slip when the car went out it went out with the car? A. Yes.

Q. And when the cable left the trolleys it carried the car about a distance of five or six feet over the platform, didn't it, [274—196] and then dumped it into the slip?

A. I don't know anything about the distance, I

(Testimony of George E. Ward.)

know the car was off the track and over in the water and the car went off and carried the cable with it.

Q. Mr. Ward, you have been down there for years when the coal vessels would come in, am I not right, speaking generally of this, we are not getting down to inches, that the platform at that place where the car went off is about six feet from the track, about six feet wide? A. No, sir, I don't think it is.

Q. What is your best judgment?

A. There is a platform there, there are joists, boards, and then this placed about eighteen or twenty inches apart, around there, maybe two feet, I don't know to inches.

Q. Is it not a fact that the car went off here?

A. That is the platform.

Q. But the platform extends some six feet or so at the curve? A. Yes, sir.

Q. At the place where this car went off?

A. When it went off the track, not off the platform. I am speaking when the car had been lifted and got off the rails.

Q. Yes, it was lifted by the cable, was it not?

A. It was lifted by the coal that was dumped there.

Q. First of all the cable was lifted by the coal upon the dollies?

A. No, Mr. Stanley, the car was lifted bodily and the cable and the grip was lifted also and taken off the pulleys.

Q. And sprang out the distance of this platform and dumped the car down into the slip?

(Testimony of George E. Ward.)

A. No, sir, the car continued on because the engine had not been stopped and the car continued on until it struck these things and it got completely off. The car had turned the curve but was off the track and it ran along [275—197] all right until it got in a straight line going towards Waikiki, then the wheels got off the ties and bumped and bumped until it got into that part and the car then went over and carried the cable with it until the grip broke and the car went in the water.

Q. Now, Mr. Ward, on the morning of your accident, July 8th, you went down there, you say, about a quarter to seven in the performance of your duties and saw Mr. Gedge?

A. Yes, I saw Mr. Gedge that morning.

Q. Did you make any inquiries of Mr. Gedge as to whether or not he had fulfilled his promise about putting in a new cable? A. No, sir.

Q. You made no inquiries from anybody or no investigation for yourself as to whether or not a new cable had been put in? A. No, sir.

Q. You went to work without knowing whether a new cable had been put in or not.

A. I went to work aboard the ship, yes.

Q. Not knowing whether a new cable had been put in or not? A. No.

Q. Not knowing?

A. Not knowing, but I relied that it would be put in that is all.

Q. And you went to work?

A. Yes, sir, I went to work.

(Testimony of George E. Ward.)

Q. About what time before your accident did you first learn that there was trouble with the cable upon that Monday morning?

A. Between nine and ten somewhere.

Q. And where were you when you first heard there was trouble? A. On the deck.

Q. On the deck of the coal boat?

A. Of the coal boat.

Q. And how were you—how did you receive word that there [276—198] was trouble?

A. Why, one of the men called for Keoke and told me to come up.

Q. Who was that?

A. I don't know just who it is now, one of the boys up on the towers.

Q. And having received this call for Keoke did he say what this trouble was or anything, or just yell Keoke?

A. Just Keoke, he called me up, Keoke, pilikia, come up.

Q. And you are as sure, Mr. Ward, as you are of anything you have testified to, that the first you knew of the trouble was when you were on the deck of the coal vessel, is that right?

A. Why, when the man called me up I went up to see what it was.

Q. You remember that distinctly?

A. I remember the man calling me, yes.

Q. And you remember that when he called you were on the deck of the vessel and that you went up?

A. Yes.

(Testimony of George E. Ward.)

Q. Now, is it not a fact, Mr. Ward, that some quarter of an hour before this accident happened you were sitting in the scale-house?

A. No, sir. No, sir, I was not sitting in the scale-house. I don't think I was sitting in the scale-house. I was aboard the ship pretty near most of the morning.

Q. Is it not a fact that instead of being on the deck of the vessel and hearing this fellow call out Keoke, and your coming up, that as a matter of fact you were in the scale-house and had been there a quarter of an hour before the accident?

A. Yes, I was in the scale-house when I came up the steps.

Q. When you came up the steps you go by the scale-house? A. Yes.

Q. Is it not a fact that instead of being on the deck of the vessel when the accident happened and being summoned up by the cry of Keoke, pilikia, that you had been for a quarter of an [277—199] hour before that in the scale-house there?

A. Well, I had been at the scale-house, Mr. Stanley, but about your quarter of an hour, I don't know whether it was a quarter of an hour before my accident, or how long before my accident that I was at the scale-house.

Q. Is it not a fact that when you heard there was trouble you were in that scale-house, and not on the vessel?

A. I was on the vessel and was called, Keoke, and that is what brought me up.

(Testimony of George E. Ward.)

Q. You are sure of that?

A. I am sure of that; that is what brought me up.

Q. You want us to understand that the only time that you were in the scale-house was coming up from the deck of the vessel and passing through the scale-house to get up here?

A. That is the only time I was at the scale-house. I had to leave the vessel, come down the gang-plank and go along the dock and walk up the steps to the scale-house.

Q. Is it not a fact that you were sitting in that scale-house for a quarter of an hour before the accident, yawning there?

A. No, sir. Sometimes the men passing there will stop and talk to me.

Q. I am not talking about sometimes; I am talking about the time of the accident.

A. No, sir; I don't remember any yawning. I went right down to where the trouble was.

Q. And your recollection is distinct that you got news of the trouble when you were on board of the ship, and got it by a cry of Keoke there is pilikia?

A. Yes.

Q. Now, then, Mr. Ward, what did you do after having left the deck of the vessel,—you left the wharf and climbed up, as I understand, to the conveyor, and passed through the scale-house and came down makai?

A. Yes, sir. I walked up the steps, and, passing through the scale-house, I went down there and saw [278—200] the cable the way it was off.

(Testimony of George E. Ward.)

Q. Was the engine stopped when you came to the scale-house?

A. I think it was stopped. I called to the boy there in the scale-house, the cable is off; I called to the boy, and he stopped the engine. Jimmie Akina was the boy that stopped the engine.

Q. What else did you do?

A. Why, naturally, I went down to where the cable was off to see what was the matter.

Q. And gave orders?

A. I sized up the thing, and gave orders about the crowbars, and seen I had sufficient slack.

Q. Seen you had sufficient slack, and got your crowbars? A. Yes.

Q. Now, tell us what, if anything, you did with the crowbars? A. Why, I assisted the men.

Q. You say, as I understand you, that you were standing with your right foot on the plank below the ties? A. Yes.

Q. And your left foot against the ties? A. Yes.

Q. Or on the ties?

A. Up on the ties, against the ties the same as I put that foot out like that (illustrating).

Q. Was it against the tie this way or on the tie.

A. Well, it is about the way you first had your foot a little while ago. Put your heel up against that place.

Mr. HEMENWAY.—This way?

A. The way Mr. Hemenway has his heel.

Mr. STANLEY.—That is the position, you remember? A. That is the position I was in.

(Testimony of George E. Ward.)

Q. And you were facing then—which way were you facing, makai, mauka or Ewawards, or how?

A. Towards Ewa.

Q. Your back really being inclined makai?

A. My back was going Waikiki.

Q. Back Waikiki, all right. Now, will you explain to the jury how, being in that position,—or first of all how was [279—201] the cable lying at that time the cable was off?

A. I have already shown you that.

Q. I want you to show it to me now?

Mr. DOUTHITT.—That is when he first got there?

Mr. STANLEY.—When he first got there.

(Witness illustrates.)

Q. Off the first four mauka pulleys?

A. Yes, sir; on the Ewa side.

Q. Now, then, standing in that position, can you tell us what you did with your crowbar—(question withdrawn).

Q. And whereabouts with reference to these pulleys, these four mauka pulleys was the cable lying when you saw it first?

A. Right in this position (illustrating).

Q. Right in that position, the cable at the foot of the pulleys? A. Laying on the flange.

Q. Laying on the plank, that would be the part below the groove? A. On the flange.

Q. I call your attention to exhibit 5—marked for identification exhibit 5, and ask you to indicate to the jury what you mean by the flange?

(Testimony of George E. Ward.)

A. Here (pointing to flare or skirt of pulley).

Q. That is you indicate, do you not, the point on the pulley below the curve?

A. Laying on the flange, yes.

Q. You indicate, do you not, Mr. Ward, the portion of the pulley below the curve?

A. Yes, sir; laying on the flange just below the curve.

Q. Now, with the cable lying down there, tell us how, with your standing with your right foot on the platform here, your left just inside, how you used your crowbar to get that up, to get the cable over it?

A. I had my crowbar here holding it on here. That is the position I was, Mr. Stanley. [280—202]

Q. You were holding it there? A. Yes, sir.

Q. You were holding it there between the fourth and fifth pulleys?

A. Yes, holding it on the fourth and fifth, where the base of the pulley is.

Q. That is all that you were doing?

A. That is all, holding it on, the men had got it up, the other men raised the thing up like that, and it was laying about in that position there.

Mr. DOUTHITT.—On top of the pulleys?

A. On top of the pulleys.

Q. On top of the four mauka pulleys?

A. On top of the four mauka pulleys. When it was just about going over these, it was just going over when that was the last I knew.

Mr. STANLEY.—When you got there, Mr. Ward, it was not on top of the four mauka pulleys, but was

(Testimony of George E. Ward.)

lying on the flange by the pulleys? A. Yes, sir.

Q. When you got there? A. Yes, sir.

Q. And then you and the men worked there for some time until you got it on top of the pulleys?

A. Yes, sir; it was on top of the pulleys. That is the last I saw of it, and it was just about going over when—

Q. You were not, then, Mr. Ward, trying yourself to pull that cable up over the pulleys?

A. Pull it up over the pulleys?

Q. Yes.

A. No, sir; I was not, I was on the mauka end, the bar was in there.

Q. And you just held your crowbar in position there to keep it in place?

A. Yes, I held the bar there.

Q. You were not straining holding on there?

A. I was just holding it down. [281—203]

Q. And then your crowbar slipped? A. No.

Q. Well, what happened?

A. The crowbar did not slip, Mr. Stanley. Why, if that crowbar had slipped, Mr. Stanley, I would not be here to-day in court.

Q. What slipped?

A. I told you before that I didn't know what happened.

Q. You don't know what happened?

A. I am sure that that crowbar did not slip. It did not slip. If it had slipped, I would have been laying on that platform.

Q. Then you don't know how it happened?

(Testimony of George E. Ward.)

A. I don't know.

Q. Didn't you answer to Mr. Douthitt that the crowbar slipped? A. What is that?

Mr. DOUTHITT.—No, he did not.

Mr. STANLEY.—I thought he did. I may be mistaken.

Q. Is it not a fact, Mr. Ward, that you were up there astride of those ties just immediately prior to your being—to your meeting with the accident?

A. No, sir; I was not nor I had not got astride of them.

Q. And had been astride of them at all up to the time that you were hurt? A. No, sir; I was not.

Q. You claim, do you not, in this case, Mr. Ward, that the cable struck you and hurled you to the ground? A. The cable did strike me, yes.

Q. Will you explain to the jury how, if you were on the inner side, the Waikiki side of that cable that cable struck you?

A. Yes, sir; because I felt the blow when I was in the air.

Q. Will you explain how, with the cable Ewa-wards— A. What is that?

Q. Will you explain how, with the cable Ewa of you, you here with the crowbar, how that cable struck you and knocked you overboard?

A. Well, I think I can explain [282—204] that very plain, Mr. Stanley. If you pry with a crowbar in this direction, why the bar will naturally send me ahead of this cable, and that is where I got the whack between the legs when I was in the air. I

(Testimony of George E. Ward.)

felt that whack all right when I was in the air when I was looking for something to hold on to. Do you understand that, Mr. Stanley?

Mr. STANLEY.—I don't understand how it happened at all. Do you understand what the witness means, genetlemen?

A JUROR.—Yes.

A. Here would be one hand, and then this thing hurling me that way, naturally hurling me ahead of the cable.

Q. What hurled you?

A. I don't know what. I told you that I was thrown ahead of the cable, and I do remember getting that whack in between the legs; I do remember that, Judge Stanley.

Q. Is not this a fact, that you were astride of the cable? A. No, sir.

Q. Using that crowbar trying to get this cable back onto the pulleys, trying to work it back over these pulleys, when the cable slipped and struck you between the legs and hurled you down?

A. Mr. Stanley, there is no need of a crowbar getting a little thing over that little distance; a boy is there all day long lifting that from fifteen to eighteen inches high.

Q. Then, why is it necessary to take a pry if all day long from seven o'clock to five at night a boy eighteen years old was capable of lifting it?

A. That thing being in such a filthy state from grease and everything else you will naturally use a crowbar; you are not going to use your hands.

(Testimony of George E. Ward.)

Q. Didn't you testify that when you got down there to the scene of the accident that you found the cable on the flange of [283—205] the pulleys?

A. Yes, sir; laying on the flange.

Q. And you ordered crowbars and then it was put back? A. Yes.

Q. Do you mean to say, now, that it was not put back by means of crowbars?

A. Yes, crowbars was used.

Q. Now, will you tell the jury the necessity there was for using crowbars?

A. I will. Well, the thing was in such a filthy state from grease that you will not use your hands.

Q. The only necessity was to save your hands from getting dirty?

A. I didn't say to save them from getting dirty. The crowbars had been used there ever since I have been on the coal-conveyor.

Q. Or to save them from getting a scratch, we will say, from the roughened condition of the cable?

A. Yes, sir; we have all had that experience; I have been pricked with the wires on my hands pretty hard.

Q. The only reason you did try to use crowbars there,—there was no necessity for it you say, but the only reason you used a crowbar there to lift this cable back was to save your hands from injury, or getting dirty? A. Oh, we always use a crowbar.

Mr. STANLEY.—I move that the answer be stricken out as not responsive.

The COURT.—Motion granted.

(Testimony of George E. Ward.)

A JUROR.—I wish you would explain again about having the bar behind this pulley and pulling back.

A. Do you want me to show it to you?

Mr. STANLEY.—Just explain it.

A JUROR.—You had one foot down here and one foot down here?

A. I was thrown clean off the thing down off the wharf. [284—206] There is a face on these things and this thing revolves and it has four lugs for bolts and this thing sets in it and you put your bar against the face of this thing.

A JUROR.—You had your bar against the base?

A. Yes.

Q. And the strain would be this way if you had your bar over the rope?

A. The bar was over on the other side of the rope, and the point on the base I remember.

Q. And you were holding onto the bar?

A. Yes, sir.

Q. And you were thrown over this way?

A. Yes, I was fired clean off.

Mr. STANLEY.—And you say, Mr. Ward, that you remember in your flight through the air the cable striking you between the legs?

A. Yes, sir; I felt something hit me between the legs.

Q. And you recall that distinctly now?

A. I still remember that.

Q. It was a case there where you went through the air with sufficient time to have that point distinctly marked on your memory?

(Testimony of George E. Ward.)

A. I felt the pain, the sting.

Q. As I understand you, you were hurled ahead of the cable?

A. I don't know if I were hurled. I was telling you I went over the side, I do not know what done it, Mr. Stanley, but I remember that sting in between my legs.

Q. You went over the side. We won't say hurled, but you went over the side ahead of the cable, and then the cable struck you between the legs, is that right?

Q. It is the cable that struck me between the legs, I remember that, and from the scratches on my leg I know it is from the wire.

Q. You were thrown ahead of the cable over the side, and then the cable struck you when you fell?

A. The cable [285—207] must have struck me, and I felt like that, the hit of that just the same as I felt that (illustrating by slapping his thigh).

Q. You testified that this box weighs five or six hundred pounds? A. About that.

Q. Have you ever weighed it? A. No.

Q. How do you know? A. By the wood work.

Q. Is it not a fact that it weighs nine hundred pounds?

A. I don't think it ever weighed nine hundred pounds in my time.

Q. Just by looking at the wood work you sized it up to be about five or six hundred pounds?

A. Yes, about that.

Mr. STANLEY.—This dolly with the single

(Testimony of George E. Ward.)

groove, I ask that that be marked for identification.

The COURT.—It may be marked for identification as Defendant's Exhibit 7.

Mr. STANLEY.—Mr. Ward, you claim in this case damages for medical expenses claiming that you have been and still are obliged to receive medical attendance from the doctor. What medical expense have you incurred?

A. Paying the doctor.

Q. What else? A. Buying alcohol.

Q. Buying alcohol. Is it not a fact, Mr. Ward, that you were attended, after your accident, by Dr. Straub of this city at the Queen's Hospital, and that your medical expense for a period of eight months after your accident was paid by the Inter-Island Company?

A. I don't know whether they have been paid, I don't know anything about it. I don't think the Inter-Island was ever asked to pay. The Inter-Island should have put me, as I understand it, into the marine ward, and by my being put in the marine ward I would not have caused the Inter-Island Company one cent because I am a marine man, and the money never bothered me, because all the time that I was in the hospital [286—208] the Inter-Island paid me my wages, and I didn't know it till long after I was home. Now, with regard to this expense, they were never asked to pay this doctor bill and they told my father they will pay the doctor, that they would pay the expense, and they would pay Dr. Straub.

Q. So your doctor's bills were paid by the Inter-

(Testimony of George E. Ward.)

Island? A. Yes, sir.

Q. By the steamship company. Now, you have also volunteered the fact that during your—you know, do you not, that you were attended by private nurses in the Queen's Hospital? A. Yes, sir.

Q. And those were paid by the Inter-Island, two private nurses?

A. I have never got a bill from them.

Q. Do you know that they were paid by the Inter-Island; did your father tell you, or anybody else?

A. My father never told me.

Q. Did anybody else tell you?

A. Straub told me that he was paid, and I think all them nurses goes in Dr. Straub's account; I think that is the way it is run.

Q. Now, you have volunteered the fact that your wages were paid and it is a fact, is it not, Mr. Ward, that the Inter-Island Company paid you at the rate of five dollars a day up to March 8th of 1913, and that you brought suit against this company without seeing them before at all on March 10th?

Objected to. Question withdrawn.

Q. Is it not a fact that up to March 8th, Mr. Ward, the company paid your wages at the rate of five dollars a day and that you brought suit on March 10th?

A. I did, yes, sir; but I had reasons for it, Judge Stanley, if I can answer you.

Mr. DOUTHITT.—You have got a right to explain it.

Mr. STANLEY.—Mr. Ward, did you have a conversation with Mr. [287—209] Gedge at the

(Testimony of George E. Ward.)

Queen's Hospital in this city stating how this accident occurred? A. No, sir; did not.

Q. You have never spoken to Mr. Gedge?

A. I spoke to Mr. Gedge; he came up and seen me once while I was in the hospital.

Q. You didn't speak to him about the accident or how it occurred?

A. No, neither did he to me.

Q. That question was not discussed?

A. That question was not discussed, no. That was not worrying me at that time; I was worrying after my ear—

Q. But Mr. Gedge went up to the hospital to see you and there was no talk at all about the unfortunate nature of the accident?

A. He told me right then I cannot talk long, and he said I tried to be up here to see you before but was never allowed. That was all that he said at that time.

Q. I am not asking about whether your conversation was long or short but was the matter of your accident and how it happened referred to by you or Mr. Gedge on the occasion of his first visit to you?

A. No, sir.

Q. Didn't Mr. Gedge ask you, "George, how the hell did this happen" or words to that effect, and you said to him, "I don't know?"

A. What is that?

Q. How the hell did this happen, why didn't you lift the weight, and you said I don't know, I was a

(Testimony of George E. Ward.)

fool I wanted to save time.

A. No, sir. No siree. I never heard them words from Mr. Gedge in my life, "How the hell," neither did Norman Gedge ever use the words, "How the hell" to me.

Q. He never used that expression?

A. No, sir, he did not. Neither he has never used such words to me, I will say that he,—if he asked me the question he asked it in a proper manner. I never heard the man use that word. [288—210]

Redirect Examination of GEORGE E. WARD.

Mr. DOUTHITT.—On your cross-examination in response to a question by Judge Stanley you said that you paid out some moneys for medical attendance, did you? A. Yes, sir, I did.

Q. Have you receipts for those?

A. Yes, sir, I have.

Q. And to whom did you pay the money?

A. To Dr. Straub.

Q. Ninety-nine dollars and fifteen dollars, August 28, 1913, and March 31st, 1913. I will ask you if those are the receipts, Mr. Ward? A. Yes, sir.

Q. That was paid by yourself out of your own money? A. Yes, sir.

Q. And for medical attendance by Dr. Straub on you? A. Yes, sir.

Mr. DOUTHITT.—I offer these in evidence.

Mr. STANLEY.—No objection.

The COURT.—They may be received in evidence and marked respectively Plaintiff's Exhibits "B" and "C."

(Testimony of George E. Ward.)

Mr. DOUTHITT.—Mr. Ward, do you know what it was that threw you through the air until you came to the dock below?

Objected to as not proper redirect examination.

A. No, sir, I do not.

Objection sustained.

Q. At the time of your accident what did the cable do, if anything?

Objected to as not proper redirect examination.

Objection sustained. [289—211]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

June 3d, 1914.

[Testimony of Norman E. Gedge, for Plaintiff.]

Direct Examination of NORMAN E. GEDGE, called
for plaintiff, sworn.

The CLERK.—Your name, Mr. Gedge, please.

A. Norman E. Gedge.

Mr. DOUTHITT.—Mr. Gedge, you are the secretary and treasurer of the Inter-Island Steam Navigation Company? A. I am.

(Testimony of Norman E. Gedge.)

Q. And you were the secretary and treasurer of that company on the 8th day of July, 1912?

A. I was, yes.

Q. Besides being the secretary and treasurer, you are the general superintendent of the Inter-Island Steam Navigation Company, were you not, Mr. Gedge? A. No, sir, I was not.

Q. You were subpoenaed yesterday on behalf of the plaintiff to produce a certain three-quarter-inch, six-strand, nineteen wire steel cable which was in use and operation on the coal-conveyor of the Inter-Island Steam Navigation Company, on the 8th [291—213] day of July, 1912, were you not, Mr. Gedge? A. I was, yes, sir.

Q. Will you kindly produce the cable?

A. I cannot.

Q. Where is it?

A. I don't know, probably used up in concrete work and on ropes and given away to captains of coal vessels on request.

Q. That cable was at the coal-conveyor of the Inter-Island Steam Navigation Company, was it not? A. No, sir, it was not, I don't think so.

Q. What? A. It was not.

Q. Don't you remember that the cable by which Mr. Ward was injured was right outside of the engine-house on the top of the coal-conveyor of the Inter-Island Steam Navigation Company?

A. No, sir.

Q. It was not? A. No, sir.

Q. When was that cable given away?

(Testimony of Norman E. Gedge.)

A. Why, I cannot tell exactly when it was given away. Those old cables are cut up and given away. As I say, hardly a coal ship comes in but what the captain asks if we are making any use of the old ropes and they ask for them and get them, too. They use them.

Q. Was the cable given away between the last trial of this case and this case, Mr. Gedge?

A. No, sir.

Q. Do you mean to state that as a matter of absolute knowledge that it was not?

A. Yes, I am satisfied that it was not.

Q. How long before the last trial of this case was that cable given away?

A. I cannot tell exactly. As I said before, the captains of the various ships request pieces of cables or they use it for putting in concrete. We have no further use for it than that and we don't keep them.

Q. At the last trial of this case, Mr. Gedge, I will ask you as a matter of fact if there was not on the dock upon which the [292—214] coal-conveyor was constructed a cable lying near the engine-house of the coal-conveyor?

A. Yes, sir, there was.

Q. There was? A. Yes, sir.

Q. Was that given away, too?

A. That has been given away, also, yes.

Q. Have you any record in your office showing when the cable, the particular cable which you were subpoenaed to produce was given away?

(Testimony of Norman E. Gedge.)

A. No, I have not, we keep no record of that. It is just like so much junk.

Q. You knew at the time when that cable was given away—Who gave it away, Mr. Gedge?

A. I probably told the captains of the ships to help themselves.

Q. You knew at that time—Was that given away at the time that Mr. Ward had brought the suit against the Inter-Island Steam Navigation Company? A. It was not.

Q. You are sure of that?

A. I am sure of it, yes.

Q. But you have no data, no record of it in your books, and you are now speaking from independent recollection?

A. We have no record, we don't keep a record of any of the old stuff that is taken off the ships or the conveyor or any other thing.

Q. I see that you retain down there these old pulleys and dollies, do you not?

A. Those things were found down there when Mr. Ward made the statement that wooden pulleys were in use there. I had Mr. Sheedy hunt around and pick up these few things.

Q. You don't give those things away?

A. Yes, we are glad to give them away if anybody will take them but nobody will take them. They were probably thrown over in the rubbish heap.

Q. Was the cable that was lying there near the engine-house or your power-house on the coal-conveyor, was that cable one of the cables that had been

(Testimony of Norman E. Gedge.)

worn out by use on the coal-conveyor, Mr. Gedge?
[293—215]

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. And do you not know, Mr. Gedge, how long before the last trial of this case, which occurred on the 13th of June, the beginning of the trial, you don't know how long prior to the time, the 13th of June, 1913, it was that this particular cable which injured the plaintiff in this case was given away?

A. No, I do not. We have no use for those things and there was no reason why there should be any record kept.

Q. You knew that a man had been injured there by reason of the cable, did you not?

A. No, I did not. I know that Mr. Ward was injured.

Q. Don't you know that Mr. Ward was injured?

A. Yes.

Cross-examination of NORMAN E. GEDGE.

Mr. STANLEY.—Mr. Gedge, you say this cable, which was in use at the time Mr. Ward was hurt was not given away at the time Ward had brought suit, what do you mean by that? I understood you to say that?

The COURT.—It had been given away prior to the last trial.

A. It was given away previous, yes.

Mr. STANLEY.—Now, Mr. Gedge, when did you first learn that Mr. Ward contemplated bringing

(Testimony of Norman E. Gedge.)

or making a claim against your company?

A. I never knew that Mr. Ward contemplated bringing any case until the papers were actually served on the company. I did not know anything about it.

Q. And that was how long after the accident, Mr. Gedge?

Mr. DOUTHITT.—The papers will speak for themselves. [294—216]

Objected to as already testified to.

Objection sustained.

Mr. STANLEY.—And I understand you say you knew nothing and the company knew nothing until the papers were actually served on your company of any claim Mr. Ward was going to make, did you?

A. The company for some time knew nothing about it at all.

Q. Mr. Gedge, if you had learned that claim was to be made would you have preserved that cable?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Exception.

Q. I understand you testified, Mr. Gedge, that the only reason this cable was not preserved was because the company had no use for it?

A. Yes, sir.

Q. Other than what you have stated?

A. Yes, sir. [295—217]

**[Testimony of George E. Ward, for Plaintiff
(Recalled).]**

Direct Examination of GEORGE E. WARD,
Recalled.

Mr. DOUTHITT.—Now, Mr. Ward, will you make your statement in regard to—make any correction which you desire to make in your testimony?

A. Yes, sir, there is one correction I would like to have made, your Honor, in reference to Mr. Stanley asking me a question. I must have misunderstood what his meaning was. Now, he asked me as we were putting in a new cable in its proper place, he asked me the question why did the cable, as I understood him, why did the cable come off, and I told him I did not know. That is true I did not know why that cable come off, but my attorney asked me yesterday—

Mr. STANLEY.—Who?

A. My attorney asked me yesterday in reference to the coming off of that cable and he said that I did not say that I did not know why that cable come off. I told him, no, I did not say that, your Honor. I told him that I did not know the cause, the reason why that cable come off, but I knew that that cable had come off and had carried me, bar and all, down on the wharf. That is I misunderstood him. I thought he asked me about a point and I thought his point was the reason, the cause of that cable coming off, and I said I didn't know.

Mr. DOUTHITT.—The cause of the cable coming

(Testimony of George E. Ward.)

off at what particular time?

A. As we were putting the cable back in the particular position.

Mr. STANLEY.—I don't think there is any misunderstanding.

Mr. DOUTHITT.—I thought there was.

Mr. STANLEY.—At the time of your accident, Mr. Ward, just prior, during the operation of getting the cable back, the weight near the drum was not lifted?

A. At the time that I was putting the cable back the weight was not lifted up, no, sir. [352—274] the weight was not lifted up.

Mr. DOUTHITT.—We rest, your Honor.

Mr. STANLEY.—At this time, your Honor, we desire to move for a nonsuit, that the plaintiff be nonsuited upon the following grounds: that the plaintiff has failed to show that the defendant, the Inter-Island Steam Navigation Company was guilty of negligence as charged or at all; second, that the proximate cause of the injury to the plaintiff was his own act; third, that the evidence clearly shows plaintiff to be guilty of negligence which not only contributed to the accident but without which the accident could not have occurred; fourth, that the evidence further shows that the plaintiff assumed all risks of the employment which resulted in the accident.

We do not desire to argue the motion at the present time. We are ready to submit it without argument.

(Testimony of George E. Ward.)

The COURT.—The motion for a nonsuit is denied, because of the decision of the Supreme Court in the previous trial of this case.

Mr. STANLEY.—Gentlemen of the Jury: I desire to outline to you what we expect to prove. We claim, of course, that it is not our fault, that this accident could not have occurred unless Mr. Ward had been guilty of gross negligence and fool-hardiness. We expect to prove that Mr. Ward at all of these times, and I am inclined to believe that it has been established by the plaintiff's own evidence, that at the time of this accident and for some years prior thereto Mr. Ward was in charge of that coal conveyer, that coal plant. He helped to construct it, was responsible for the construction of all the steelwork, including the laying of the cable, trolleys and everything else, and was [353—275] thoroughly familiar with that plant. He knew, for instance, that there was no railing or platform around the makai end of it and continued to work there for several years with it in that condition. We expect to prove to you, gentlemen, that no complaint was made at all, to Mr. Gedge or anybody else about the condition of the cable, that the cable was and had been in use for some little time and was naturally to some extent worn on the outside and showed some signs of usage, but it was a good cable and in fit condition to use and there was no necessity to take it out. That is, was doing good work. As I say, no complaint whatever was made about that cable to Mr. Gedge or to any of the officers of the company

(Testimony of George E. Ward.)

and they had no notice that there was any necessity to remove that cable. We undertake, also, to show, gentlemen, that on the occasion of Mr. Ward's accident that Mr. Ward was not down on the coal ship as he says, but he was at the scale-house talking with some witnesses whom we will produce before you, uarning, spending his time that way; that he was called to "George pilikia," and that the cable engines were immediately shut off, steam was immediately shut off and the cable stopped. That Mr. Ward went down there, gentlemen, and picking up, I believe, a crowbar, as he went down, with several other men, heard that the cable was then off its set of eight pulleys; that the pulleys on the head, the mauka side of the eight, on the Ewa side of the conveyor. That Mr. Ward got up on those ties, the ties being about the width of four feet standing in a position facing makai, or Eastward; that he got a crowbar and was holding a part of the cable down or attempting to pry it back over the pulleys and something slipped, the crowbar slipped or something, and Mr. Ward was hurled down below. That at the time that Mr. Ward was in this position on these ties at the height of some twenty-five feet from the ground he was warned by one of his fellow workmen that there would be pilikia if he attempted to put the cable back in that way [354—276] and he said "never mind," and went ahead with it and the next thing we knew he was over on the wharf below. We claim, gentlemen, that, while there was no railing here at that time or guard-rail,

(Testimony of George E. Ward.)

but at the place if a man exercised ordinary care and prudence as under the evidence shown by the plaintiff the cable was in such a condition as to slackness that it could have been put back by a boy, or if it was taut that the weight could have been lifted. We claim that our company has provided the means of getting all the slack of the cable that is necessary; that the company has provided a means that Mr. Ward knew of, that he had been running that coal-conveyor, as I say, for years and deliberately forebore to use what the company provided, and in either case, **whether there was sufficient slack** without doing it so that it could be put back by hand, or whether it was taut and you had to put the weight back and the weight was not lifted up Mr. Ward would be guilty of negligence, it would defeat his recovery in this case. We claim that the proximate cause, which the Court will instruct you as to, the real cause of Mr. Ward's accident was his own negligence in attempting to restore the cable and putting himself in the position in which he was and we will ask a verdict at your hands on the evidence submitted.

[Testimony of Nunu, for Defendant.]

Direct Examination of NUNU. called for defendant,
sworn.

Mr. STANLEY.—Nunu, where do you live?

A. At Kalihi.

Q. In Honolulu? A. Yes, sir.

Q. Do you know Mr. Ward, the plaintiff in this case? A. Yes.

(Testimony of Nunu.)

Q. Do you remember the fact of his being hurt at the coal-conveyor [355—277] of the Inter-Island Steamship Company? A. Yes.

Q. Do you know the date of that accident?

A. I do not remember the date.

Q. Well, about how long ago was it?

A. About a year, perhaps.

Q. Now, where were you at the time that Mr. Ward got hurt?

A. I was with him, he went down ahead and I came near going over myself.

Q. Now, where did this accident occur?

A. Well, he got hurt where he met the accident.

Q. Well, was he hurt in this building or where was he hurt, where did the accident occur?

A. Where he fell.

Q. Where did he fall on King Street, outside this building or did he fall on the waterfront, where-about?

A. Down at the Inter-Island coal-conveyor.

Q. And from what part of the coal-conveyor did Mr. Ward fall? A. At the turn.

Q. Well, now, how many turns or curves are there on the coal-conveyor? A. Near the eight pulleys.

Q. Now, I will ask you do you recognize this as being a model of the makai end of the coal-conveyor, calling the witness' attention to the model which has been used in testimony? A. Yes.

Q. Well, now will you come down here and show us if you can—do you recognize this, too, as the makai end of the coal-conveyor? A. Yes.

(Testimony of Nunu.)

Q. Now, whereabouts was Mr. Ward standing just before he fell?

A. He was about in this position (illustrating).

Q. What foot had he there?

A. His right foot was here—his right foot was inside of the rail.

Q. And where was the other foot?

A. And his left foot on the outer edge—his right foot was inside of the track Ewa of the Waikiki rail, on the Ewa track, opposite the point marked [356—278] A, and his left foot on the outer edge of it, Ewa of the Ewa rail of the Ewa track.

Q. And at the time that you say that Mr. Ward was in that position where were you?

A. I was about in the same position except I was further makai.

Q. And which way was Mr. Ward facing?

A. Facing mauka.

Mr. DOUTHITT.—He was facing mauka?

A. I was facing mauka.

Mr. STANLEY.—Well, were you facing in the same direction as Mr. Ward, or in a different direction? A. I was facing mauka.

Q. And which way was Mr. Ward facing?

A. He was facing mauka, he was trying to get the cable back onto the pulleys.

Q. Well, now, after seeing Mr. Ward as you place him on the ties what did you next see?

A. He wanted me to go down and lift the weight so as to get the slack.

Q. Who wanted you to go and get the weight?

(Testimony of Nunu.)

A. I wanted to go down.

Q. Did Mr. Ward say anything to you about lifting the weight to get the slack? A. No.

Q. Then what did you say to Mr. Ward?

A. I told him not to use the crowbar to pry the cable out, you would have to go down and lift the weight up first to get the slack.

Q. And what did Mr. Ward say to that?

A. He said it was all right there was sufficient slack there.

Q. And was anything else said? A. No.

Q. What did you next see?

A. Well, after George fell off the conveyor we went and lifted the weight up.

Mr. DOUTHITT.—I move that that be stricken out as not responsive.

The COURT.—It is so ordered.

Mr. STANLEY.—Did you see anything happen to George after you had seen him in this position astride of the track?

A. He [357—279] went after the crowbar himself.

Q. Where did he go?

A. I gave the crowbar to him.

Q. Well, after he got the crowbar what did you next see?

A. Well, I told him that we could not replace the cable, it seemed to be caught and for us to go down and lift the weight up and get the slack and he said no, there was sufficient slack there and started to handle the crowbar and over he went.

(Testimony of Nunu.)

Cross-examination of NUNU.

Mr. DOUTHITT.—Who had hold of that crowbar? A. George.

Q. Didn't you have hold of it too?

A. Kaimi and I hold a crowbar.

Q. What was Ward doing?

A. Well, he had a crowbar and was trying to pry the cable back.

Q. Who had the crowbar and was trying to pry it back? A. George Ward.

Q. And you had a crowbar, too, didn't you, the same crowbar that George Ward had?

Objected to.

A. He had one crowbar and we had another crowbar.

Mr. DOUTHITT.—Oh, there were two crowbars there? A. Yes, sir.

Q. Now, who had the crowbar that George Ward had, did you have hold of that crowbar? A. No.

Q. Who did? A. Mr. Ward did himself.

Q. Nobody else but Ward held that crowbar?

A. Why, I held it too.

Q. Who had the other crowbar?

A. Kaimi. [358—280]

Q. And who else? A. Kaimi, Kalai and Kalau.

Q. Kaimi and Kalai had one crowbar and you and Ward had the other? A. Yes.

Q. And you and Ward were pulling on the cable or were you holding it in position?

A. Just steadying the cable.

(Testimony of Nunu.)

Q. Now, Ward had his left foot up like that on the tie didn't he?

A. Well, he had his foot up on the rail and we were holding the crowbar down against the cable and the crowbar slipped and over he went.

Q. Did the cable leave the pulleys?

A. Yes, the cable slipped.

Q. The cable shipped out of these entire pulleys and carried overboard, didn't it?

A. It is when the cable slipped off the pulleys George fell over down to the dock below.

Q. Ward still had the crowbar in his hand as he went overboard down to the dock below? A. Yes.

Q. Now, Ward had one foot up like that holding that cable in position, didn't he?

A. He was putting his foot up that way and holding the crowbar down against the cable and was in the act of replacing the cable, pushing the cable back when the cable slipped off the pulleys and knocked both Ward and the crowbar over.

Q. And he had his left foot up like that towards the sea, holding it in position as I am just now?

A. Yes.

Q. And his right foot was down on the planks here that run right out at the head of this coal-conveyor, right here, was it? A. Not there.

Q. Where was it? A. On top.

Q. He was straddled like this, was he, looking off, trying to hold the cable in position, was he?

Objected to. [359—281]

(Last question read.)

(Testimony of Nunu.)

Mr. DOUTHITT.—He had his left foot up on the ties, did he, like that, holding the cable in position and you were there with Ward holding it with him?

A. Yes.

Q. And he was facing north, was he?

A. I was facing mauka and George was facing makai.

Q. Didn't you testify here a few moments ago that George was facing mauka and that you were facing mauka?

A. Well, I was facing mauka and he was facing makai.

Q. George had the left foot on the ties facing makai, where was his right foot?

A. Well, he was facing the cable when he was trying to replace it when he fell over.

Q. Sure he was facing the cable, but he was not facing makai, was he?

Objected to.

Q. Was he facing makai?

A. He (indicating George Ward) was facing makai.

Q. And where was his right foot?

A. About the position that I am in now facing mauka (both feet together on floor).

Q. Facing what? A. Facing mauka.

Q. And he was standing there holding the cable in position while Kalau and Kaimi were endeavoring to pry it back, was he? A. Yes.

Q. What was the condition of the cable?

Objected to as improper cross-examination.

Objection sustained.

(Testimony of Nunu.)

Mr. DOUTHITT.—You are employed down there at the present time by the Inter-Island, are you not?

A. No.

Q. Where are you working now? A. Stevedore.

Q. You work down there at the coal-conveyor when the ships come in, don't you? A. No.

Q. Never do any more? A. No. [360—282]

Q. You have before, have you not? A. Yes.

Q. Who have you talked to about this case?

A. The company sent for me.

Q. And who have you talked to about it?

A. I don't know his name.

Q. Is he here? A. Yes.

Q. Where is he? A. Judge Stanley.

Q. What was the conversation—what language was that conversation in that you had with George in which you suggested that George lift the weight, what language was that conversation carried on in?

A. In Hawaiian.

Q. Everybody else there could hear it, could they?

A. Yes.

Q. George was the boss, was he not? A. Yes.

Q. Where had he been before the cable was off, do you know?

Objected to as not proper cross-examination.

Objection sustained. Exception.

Q. Did anybody else suggest to Ward that the weight should be lifted besides yourself? A. No.

(Testimony of Nunu.)

Q. Now what language did you speak to Judge Stanley in when he asked you about the case?

A. In Hawaiian.

Q. Through an interpreter? A. No.

Q. What language did you use to Judge Stanley?

A. I spoke to him in Hawaiian.

Q. Who was the interpreter? A. Johnny.

Q. Johnny who?

A. That is the only name I know him by.

Q. That is Johnny Davis, is it not, down at the Inter-Island Steam Navigation Company's conveyor, or Johnny Kekuewa? A. Yes.

Q. He works down at the Inter-Island Steam Navigation Company, don't he? A. Yes, sir.

Q. And Johnny Kekuewa brought you up to Judge Stanley's office? [361—283]

Objected to as incompetent, irrelevant and immaterial, having no bearing on the issues of the case and not proper cross-examination.

Question withdrawn.

Q. You just tell us the exact words that you used to George Ward when you told him to get the weight and lift the weight? A. I don't remember.

Q. As a matter of fact, you don't remember much about this case at all, do you? A. I have forgotten.

Q. As a matter of fact, you don't remember whether you said anything to Ward or not at the time the cable was being replaced; is not that a fact?

A. I remember what happened at that time, but not the day.

Q. You don't remember as a matter of fact what

(Testimony of Kaimi.)

you said to Ward? A. I have forgotten.

Q. Or whether you said anything at all about it to him? A. I don't remember.

[Testimony of Kaimi, for Defendant.]

Direct Examination of Kaimi, called for the defendant, sworn.

The CLERK.—What is your name? A. Kaimi.

Mr. STANLEY.—Where do you live, Kaimi?

A. On School Street.

Q. In Honolulu? A. Yes, sir.

Q. And where are you employed?

A. Down on the wharves.

Q. Are you employed by the Inter-Island?

A. Sometimes with them and sometimes as a stevedore.

Q. Do you remember the occasion—I will ask, do you know [362—284] Mr. Ward? A. Yes.

Q. Do you remember the occasion on which he was hurt at the coal-conveyor of the Inter-Island Company? A. Yes.

Q. At what part of the conveyor did the accident happen? A. The makai end.

Q. Did you see the accident happen to Mr. Ward?

A. Yes.

Q. Now, what did happen to him?

A. Well, he fell over and got hurt.

Q. Now, where was Ward standing just before he fell?

A. He was standing near the makai end, facing makai.

Q. And on what part of the conveyor was he stand-

(Testimony of Kaimi.)

ing— You recognize this, do you, as a model of the makai end? A. Yes.

Q. Now will you indicate or point to the jury where Ward was standing before he fell?

A. One foot was on this side and the other foot on the other end.

Q. That is one foot was Waikiki—on the ties on the Waikiki side of the Ewa track and the other was on the Ewa side of the track, on the ties at the Ewa side? A. Yes.

Q. And where were you at that time, Kaimi, when you saw this? A. I was under the tower, the makai tower.

Q. Standing where?

A. I was under the tower up here; I was the one loading the cars with coal.

Q. Where do you load the cars with coal?

A. I was on the center plank.

Q. Referring to the planking between the two tracks. Who else was in the vicinity around there?

A. David Kalau was with me. He was the one who passed the car over to me.

Q. I am talking now of the time after Ward fell, Where were you at that time?

A. There was myself, Nunu and a half-white boy.

Q. Do you know what the name of the half-white boy is? A. I do not remember it now.

Q. Do you remember whether he was called Charley. Charley [363—285] Merseberg? A. Yes.

Q. And when Ward in the position up here as you have explained facing makai just before he fell,

(Testimony of Kaimi.)

where were you standing? A. I was about here.

Q. Mauka or makai of George?

A. I was mauka of George.

Q. State whether or not at the time—oh, I will ask you what was George doing at the time he was standing astride on the ties just before he fell?

A. The cable had slipped off the pulleys.

Mr. STANLEY.—Indicating the cable off the set of eight pulleys.

A. Well, the cable was off. I placed the crowbar up here at the head of the pulleys, the mauka head and had moved the cable back into position; the makai part of the cable off the pulleys had not at that time got onto the pulleys when George Ward came makai and put a crowbar in under the cable.

A JUROR.—Underneath the cable?

A. Yes, sir.

Q. Underneath the cable and what was the next thing you saw after seeing George in that position with his crowbar?

A. I saw him again as he fell over.

Mr. STANLEY.—Did you hear anything said to George while he was in the position you have indicated? A. No.

Q. I ask you and call your attention particularly to Nunu, if you heard Nunu say anything at that time?

A. Before we started in to work at the cable there I heard him say for us to go down below and lift the weight up.

Q. What is that?

(Testimony of Kaimi.)

A. Before we started to replace the cable I heard him say for us to go down and lift the weight up.

Mr. DOUTHITT.—Heard who say?

The INTERPRETER.—The question was addressed to Nunu.

Mr. STANLEY.—Who did he say that to?

A. To George.

Q. What did George say?

A. He made no answer. [364—286]

Q. State whether or not there was any car in the vicinity on the Ewa set of eight pulleys at the time that you were putting the cable back. A. Yes.

Q. Now on which side of the set of pulleys that is the mauka or makai side was that car?

A. Mauka.

Q. And about how far from the mauka end of that set of pulleys? A. About four or five feet away.

Q. State whether or not the position of that car was changed at any time before you attempted to get back the cable?

A. The car was pushed away before we replaced the cable and was that before or after George was hurt? A. Before he was hurt.

Q. And who put the car back? A. I did.

Cross-examination of KAIMI.

Mr. DOUTHITT.—Where were you when the cable came off?

A. Under the tower.

Q. Do you know where Ward was?

Objected to as improper cross-examination.

(Testimony of Kaimi.)

Mr. DOUTHITT.—Where was he at the time the cable came off?

Objection withdrawn.

Q. Where was Ward at the time the cable came off?

A. He was down at this end (indicating center planks).

Q. At the time when the cable came off the pulleys he was down at that end of the conveyor was he?

A. Yes, he was standing there.

Q. He was standing there at the time? How many pulleys did that cable come off?

A. All of them.

Q. Off the entire eight? A. Yes.

Q. And you at the time the cable came off were under the [365—287] tower? A. Yes.

Q. Loading coal on the Waikiki track?

A. Yes.

Q. What were you putting the cable back with?

A. Crowbars.

Q. Who had the crowbars?

A. I had a crowbar, George had another.

Q. And who had hold of the crowbar, who, if anybody?

A. That half-white boy whose name was mentioned a short while ago.

Q. Merseberg? A. Yes, Merseberg.

Q. Then you and Merseberg had hold of one crowbar and Nunu and Ward had hold of the other?

A. George was the only one I saw holding a crowbar and he fell over with it.

(Testimony of Kaimi.)

Q. What was Nunu doing?

A. Just standing there.

Q. He didn't have hold of the crowbar at all?

A. He had not touched it when George fell over.

Q. Where was Kalau?

A. Under the tower on the Ewa side.

Q. At the time when George fell?

A. Yes, he was some distance away.

Q. About how far away from the head of this coal-conveyor?

A. Ten feet more or less.

Q. Mauka of the makai end?

A. Yes, sir.

Q. You were putting the cable back by means of crowbars, as you say?

A. The cable was off the eight pulleys when we came down to replace it, I was in the makai position and had lifted the cable off onto the mauka pulleys, the first pulley and had moved my crowbar further along and was holding the cable taut when George Ward came makai and placed his crowbar under the cable and was in the act of prying the cable up when his crowbar slipped and that portion of the track was well greased and then he fell over.

Q. What knocked him over, the cable?

A. No.

Q. What knocked him over? [366—288]

Objected to as calling for the conclusion of the witness.

Objection sustained.

Q. What was it that threw George over, if anything?

Same objection; same ruling.

Q. Did George slip and fall over?

(Testimony of Kaimi.)

A. I was mauka and had pulled my crowbar out and was holding the cable on when George put his crowbar makai and started to lift the cable up to get it onto the pulleys. Instead of getting the cable onto the pulleys the crowbar slipped under and the cable being taut while I was holding it slipped back on the bar and knocked him over back of the bar.

A JUROR.—Which side of the track was George standing on when he put the bar under the cable? This witness testified that he was standing over the track awhile ago when the cable went off but not which side of the conveyor he was standing on when he placed the bar under the cable. Which way was he pulling when he placed the bar under the cable?

The COURT.—Ask him.

A. He had one foot on the Ewa side end of the tie and one foot on the Waikiki end of the tie and he was facing makai and he put the crowbar under and pried the cable.

A JUROR.—Facing makai? A. Makai.

Mr. DOUTHITT.—With his legs completely straddling that Ewa track of that coal-conveyor, as I understand you? A. Yes.

Q. And where was Nunu?

A. Alongside of them on the Waikiki end of the ties.

Q. But Nunu was not holding onto the bar, as I understand Ward was the only man who had hold of the bar? A. George was the only one.

Q. Was he facing toward the sea, makai?

A. He was lifting up, on the pulley right about

(Testimony of Kaimi.)

where the eight pulley is, facing the sea, placing the cable over the pulley behind him. [367—289]

Mr. DOUTHITT.—Yes.

A JUROR.—How high is that track there?

A. About three feet or less. I didn't measure.

Mr. DOUTHITT.—When you attempted to replace the cable you usually use the bars, don't you?

Objected to as improper cross-examination.

Objection sustained.

Q. Do you know the usual manner of replacing the cable when it is off the pulleys, and was that the manner that was used on the date of this accident?

Objected to as improper cross-examination.

Objection sustained. Exception.

Q. Where were these crowbars kept?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. Where were the bars that you procured on this occasion?

A. I had one under my tower, the other one was from the mauka tower.

Q. And do you know what the crowbars were there for?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Objection sustained.

Mr. DOUTHITT.—Ward then was facing makai, was he, at the time the accident occurred?

A. Yes.

Q. And Kalau did not assist at all in attempting

(Testimony of Kaimi.)

to restore the cable, he remaining under the tower?

A. He did not come there.

Q. What language did Nunu speak when he told George to lift the weight? A. In Hawaiian.

Q. Now, you just tell me exactly what he said?

A. Nunu said to George, he said "George, go down and lift the box," and George said "No, get the crow-bars." [368—290]

Q. Said it in the presence of who?

A. No, George didn't say anything but told us to go and get the crowbar.

Q. Said that in your presence and in the presence of Merseberg and in the presence of Kalua?

A. David Kalua did not hear Ward.

Q. Well, he was out under that tower wasn't he?

A. Kalua was some distance away underneath the tower to be sure from where we were and Nunu didn't speak in a very loud voice, he said George lift the box.

Q. But Merseberg was there, was he not?

A. He was there, we were all there together.

Q. And there was nothing to prevent Merseberg from hearing it if he was there was there?

A. He could.

Q. You didn't say anything to George about lifting the weight, did you? A. I did not.

Q. Merseberg didn't say anything to George about lifting the weight did he?

A. No, Nunu is the one who spoke to him.

Q. And Kalua was not even called from his work under that makai tower to help the rest of you in

(Testimony of Kaimi.)

putting that cable back; do you wish the jury to understand that? A. He was not called.

Q. And although the cable was off the entire series of pulleys, was it, although the cable was off the entire series of eight pulleys, Kalau was not called from his work under that tower?

Objected to as already asked and answered, and argumentative.

Objection sustained.

Q. Kalau had nothing to do with the restoring of that cable or assist in restoring it at the time that Ward was hurt?

Objected to as already asked and answered.

Objection overruled.

A. He did not come near. If George had said he wanted him to come and assist he would have done so. [369—291]

Q. But he didn't come and he was not requested to come? A. Yes.

Q. Have you ever received any promise from the Inter-Island Steam Navigation Company for any testimony that you were about to give in this case?

A. No.

Q. Have you not been promised the sum of two dollars a day if you would testify in favor of this defendant for an indefinite time whether you worked or loafed? A. No.

Q. Didn't you tell David Kalau that you had been promised the sum of two dollars a day—just a minute please—that you had been promised the sum of two dollars a day by the Inter-Island Steam Naviga-

(Testimony of Kaimi.)

tion Company for the rest of your life, whether you worked or loafed if you would testify for the defendant in this case?

A. The company did not make that offer, except this that I told the representative of the company that if they wanted me to come and testify for them that they should reimburse me for the loss of my day's work, that is all.

Q. You didn't tell David Kalau that if you came here that the company had promised you a steady job at two dollars a day, if you came here and testified for the defendant, you didn't tell David Kalau that? A. No.

Q. Have you talked about the case with anybody since—before coming here as a witness? A. No.

Q. You have not talked then with anybody before you came to this courtroom to give your testimony?

A. Kekuewa came and told me to come up here and testify. That is all.

Q. And that is the only conversation that you had with reference to this case was with Johnny Kekuewa?

A. Well, he told me to testify in behalf of the company.

Q. That is the only talk that you had with Johnny Kekuewa? A. Yes.

Q. You didn't tell Johnny Kekuewa what you were going to testify to, did you?

A. I told him. [370—292]

Q. Did you tell anybody else—you didn't tell anybody else besides him did you? A. Not others.

(Testimony of Kaimi.)

Q. You have taken considerable interest, have you not, in behalf of the Inter-Island Steam Navigation Company in this case?

A. No, I simply came here as a witness when I was asked to come to testify to the trial.

Q. And you remember the fact that David Kalau was subpoenaed as a witness, don't you?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Mr. DOUTHITT.—I want to show this witness' interest. It is simply preliminary. I want to show what he did. I want to show that he came down there for the purpose of receiving David Kalau when he came.

Objection overruled. Exception.

A. Well, he is a witness for George Ward.

Q. He got in from Kauai and you were down there at the boat to meet him on the Sunday morning when the boat got in?

A. I went down there to meet a passenger from Kauai.

Q. Who was the passenger?

A. A passenger from Kapaa.

Q. What is his name? A. Hilikolo, a man.

Q. Was Johnny Kekuwa down there that morning? A. I saw him there.

Q. Did you go in company with David Kalau to the attorney's office or house that day? A. No.

Q. David Kalau was a passenger on that boat, that your friend came in on that morning was he not?

A. Yes.

(Testimony of Kaimi.)

Q. Did you go anywheres with David Kalau that day when the boat got in from Kauai?

Objected to as incompetent, irrelevant, immaterial and not proper cross-examination.

Mr. DOUTHITT.—I want to show the witness' interest. [371—293]

Objection overruled. Exception.

A. No.

Q. Did you have any conversation at all with Kalau that morning about this case?

A. No, just greeted him as he came on shore. I think that George had subpoenaed him to come down.

Redirect Examination of KAIMI.

Mr. STANLEY.—You knew that George had subpoenaed him at the last trial?

Objected to as leading.

Q. What do you mean by saying—what made you think that George had subpoenaed Kalau?

Objected to as argumentative and calling for the speculation and conjecture of the witness.

Objection sustained, as immaterial and not proper redirect examination.

Mr. STANLEY.—It was brought out on cross-examination that Ward had his back towards the pulleys where he was trying to restore and just to straighten it out I want to have it indicated here whereabouts George had his crowbar.

Objected to.

Mr. STANLEY.—It came out in response to a question put by a juror during Mr. Douthitt's cross-examination. There is some misunderstanding and I

(Testimony of Kaimi.)

want to get it straightened out.

The COURT.—It is really not part of your cross-examination. The matter might be elucidated, however. [372—294]

Mr. DOUTHITT.—We object to it.

Objection overruled.

Mr. STANLEY.—Indicate now as near as you can whereabouts Ward had his crowbar at the time just before he fell over, whereabouts with reference to the eight pulleys? A. About here.

Mr. STANLEY.—Indicating between the fourth and fifth pulleys.

A JUROR.—That is what he said before.

Mr. STANLEY.—You were asked as to having had any conversation and you mentioned having had conversation with Kekuewa. When was that with Johnny Kekuewa? A. Last evening.

Q. And where was it? A. At his office.

Q. Do you remember stating to me at all—

Objected to on the ground that the witness has answered that he had not spoken to anybody with the exception of the conversation with Johnny Kekuewa.

The COURT.—You said you had conversation at his office, whose office did you refer to?

A. Johnny Kekuewa's office.

Objection overruled.

A. No.

Mr. STANLEY.—Do you remember having had a conversation with me a few days ago?

A. No.

(Testimony of Kaimi.)

Q. Did you understand the question? Do you understand speaking to me about this case?

Objected to as leading. Objection sustained.

Mr. STANLEY.—Is it not a fact, Mr. Kaimi, that you have not spoken to anybody about this case except Johnny Kekuewa?

Objected to as already asked and answered.

Objection overruled.

A. Well, Kekuewa is the one I spoke to and he is the only one and he came after me and asked me to help the company out. [373—295]

[Testimony of Edward B. Friel, for Defendant.]

Direct Examination of EDWARD B. FRIEL, called for the defendant, sworn.

The CLERK.—What is your name?

A. E. B. Friel.

Mr. STANLEY.—And where do you live?

A. Honolulu, here.

Q. And do you remember, Friel, the occasion of an accident which Mr. Ward sustained at the coal-conveyor of the Inter-Island Steamship Company?

A. I do.

Q. Do you remember now about when that was?

A. July 8th, 1912.

Q. Now, where were you at the time of the accident?

A. Checking coal off for the Inter-Island.

Q. In the company's employ?

A. In the company's employ, yes.

Q. And in your business in the processs of checking coal where were you stationed?

(Testimony of Edward B. Friel.)

A. On the lower end, the custom-house officer was on my—

Q. On the lower end of what?

A. The upper end I mean of the coal-conveyor where the scales were.

Q. In the scale-house? A. In the scale-house.

Q. And now, shortly before the accident, Mr. Friel, where were you? A. At the scales checking off.

Q. And who was with you?

A. The custom-house officer, Mr. Cameron.

Q. Mr. a custom-house officer and who else?

A. Mr. Ward. Mr. Ward was, I think, on the right-hand side of the custom-house officer, sitting down.

Q. And what was the first you knew of there being any trouble on the elevator, on the conveyor?

A. Well, one of the boys later sang out and Mr. Ward sang out there is pilikia. [374—296]

Q. Now, how long about had Mr. Ward been in the scale-house with you and Mr. Cameron before that boy yelled out pilikia?

A. I should say about ten or fifteen minutes, something like that. It was not very long anyway.

Q. Your best judgment is it is ten or fifteen minutes? A. About ten or fifteen minutes.

Q. And what was Mr. Ward doing there?

A. Well, he was talking with us, we were all conversing one with the other.

Q. Now, when the native boy called out to George what did George do?

A. He got up and went down to the lower end of the conveyor.

(Testimony of Edward B. Friel.)

Q. When you mean the lower end is it mauka or makai? A. The makai end towards the sea.

Q. And what did you do?

A. Well, Cameron and myself both got up and walked down, part the way down.

Q. Was George ahead of you or behind you?

A. He was ahead of us, yes.

Q. And about how close to the makai end of the conveyor did you go?

A. Well, I should say about somewheres around about *twenty or feet*, twenty feet, near abouts anyway.

Q. And how far did Mr. Cameron go?

A. I think he went about the same. I am not sure because he was behind me.

Q. And whereabouts on which track of the conveyor, if you were on the tracks, did you walk?

A. On the Waikiki side.

Q. Now, when you got down to this point about twenty feet from the makai end of the conveyor, did you see Mr. Ward? A. I did, he had a crowbar.

Q. And whereabouts was he on the conveyor *was he* when you got to this point twenty feet away?

A. About near the curve.

Q. And which curve, the Ewa or Waikiki?

A. The Ewa curve.

Q. And whereabouts on that curve was he standing.

A. Well, [375—297] I could not—well about.

Q. In what position was he standing?

(Testimony of Edward B. Friel.)

A. Well, he had the crowbar under the—under the line there.

Q. What do you mean?

A. The cable, under the cable, trying to bring it over, it was off the trolley.

Q. It was off the trolley? A. Yes.

Q. Now, you say that George had his crowbar under the line or cable? A. Yes.

Q. Now, whereabouts was he standing with respect to the cable, in what position?

A. As I could see he was standing across the cable with his face seaward.

Q. State whether or not—you say he was standing across the cable, state whether or not he was standing on the ties.

A. No, I didn't notice him standing on that, all I noticed he was crossing the cable that was all I could see.

Q. What do you mean by across the cable?

A. One foot across and the other foot was on the other side.

Q. On the other side of what? Let me show you this model here. You came down you say to what position?

A. This Waikiki track to a position some thirty feet or so away.

Mr. STANLEY.—The witness indicates about this third stanchion on the Waikiki side.

A. Yes, sir.

Q. Now, will you show us where George was?

A. About there. This is the set of eight pulleys,

(Testimony of Edward B. Friel.)

somewhere down there and he had his foot across, his foot across there, across the way. This is supposed to be the cable.

Q. Then you indicated that George had his foot on the ties at the track? A. Yes, sir.

Q. And that was the position which you saw?

A. That is the position I saw, when I saw that I turned around and went [376—298] back and Cameron did the same thing.

Q. Did you hear anything said to Ward or in Ward's presence when he was in this position?

A. I heard one of the natives say not to do that aole, make, pilikia, and he made a reply something like shut up.

Q. And do you know which particular native that was?

A. I found out afterwards it was a fellow they call Nunu.

Q. Did you know him by any other name?

A. Yes, they called him Kalau.

Q. Did you know at the time that it was Kalau or Nunu speaking?

A. No, I didn't until I found out afterwards.

Q. Yes, I know the man I *didn't* what his name was until afterwards.

Q. But the man is Nunu or Kalau?

A. Yes, the same one was Kalau.

Q. When you heard this remark shut up what did you do?

A. I turned around and went off, it was when I was going off that I heard this remark.

(Testimony of Edward B. Friel.)

Q. And what did you next hear, if anything?

A. Next I heard one of the boys sing out George make and then we went across to the side there and saw him on the ground below.

Q. And how far had you got on your way back after turning around? A. About half way.

Q. Half way?

A. Half way to the scales. [377—299]

Cross-examination of E. B. FRIEL.

Mr. DOUTHITT.—You looked over and saw him laying down below?

A. Yes, sir.

Q. Where were you, Mr. Friel?

A. I was on this side and I crossed over to that, Cameron and I crossed to the other side and Cameron then—I said to Cameron go and get a patrol wagon and telephone to the hospital.

Q. You were half way down and it is a distance of three hundred feet between that scale-house and that makai tower? A. Yes.

Q. And you had walked down between—did you walk on the track or did you walk on the planks?

A. Walked on the planks and went across afterwards when I heard the noise.

Q. Walked on the tracks?

A. We walked on the track, the cable was stopped.

Q. You walked on the Waikiki track? A. Yes.

Q. And you were about half the distance, about one hundred and fifty feet?

A. I don't know how long this was.

Q. Where was Mr. Cameron walking?

(Testimony of Edward B. Friel.)

A. He was right behind me.

Q. On the same track?

A. I would not say it was on the same track, but he was right behind me, but we went down on the same track. I cannot swear it was the same track.

Q. You walked down and saw Mr. Ward at the mauka end of the series of eight pulleys?

A. Yes, sir.

Q. At the mauka end?

A. Right where I pointed out to there, right where I pointed out.

Q. Where is that right here?

A. Where the depth is there.

Q. Where was the depth?

A. The depth was there. [378—300]

Q. And you saw him there, did you? A. Yes.

Q. And then you turned around and it did not interest you any further? A. No.

Q. There was nothing to interest you in at all?

A. Nothing, I just went down to see what the trouble was.

Q. And there was nothing unusual?

A. No, oftentimes the trolley got off, the cable got off the trolley, that is nothing new to me.

Q. At this point?

A. No, at different places, though at that point sometimes and sometimes at another point.

Q. Do you mean to tell me that the trolley got off at this point?

A. I say I don't know if it got off there, but it got off in different points.

(Testimony of Edward B. Friel.)

Q. In the coal-yard?

A. The coal-yard. I am talking about the conveyor, on the conveyor.

Q. And you know that the cable got off at other points of the conveyor than the coal-yard?

A. Yes, sir.

Q. Your business was at the scale-house?

A. Yes, sir.

Q. You are employed by the Inter-Island Steam Navigation Company as checker?

A. Not constantly.

Q. Your son is employed at the present time by the company? A. Yes.

Q. What capacity is he in there?

A. He is on the wharf, been there for seventeen years in their employ.

Q. What other places did you see that cable get off that conveyor, Mr. Friel?

Objected to as not proper cross-examination.

Objection overruled. Exception.

Q. Where? A. What is that?

Q. Where, Mr. Friel? A. Where what?

Q. Where have you ever seen that cable off? You said you've seen it off?

A. Why, on the side there, on the [379—301] sides there.

Q. What is on the sides there, the pulleys did you mean?

A. Many times on the side running along the cars would connect with one another and knock it out.

Q. Can you tell me where there is a pulley along

(Testimony of Edward B. Friel.)

that track on the side, Mr. Friel?

A. Why, I have seen a car off many a time.

Q. Will you show me on this model, show me on that coal-conveyor where there are any pulleys on that track with the exception of these makai ends?

A. What do you call the ends there, where the cable rests on?

Q. Are they pulleys? A. Well, what are they?

Q. I am asking you?

A. That is where I have seen it get off on many a time.

Q. You have seen that lay down, sag down?

A. Where they have had to stop the work, yes.

Q. Because it got off? A. Yes, sir.

Q. The pulleys are simply to maintain the cable in position as it runs around and you have seen them have to stop that work when that cable got off those?

A. Yes, many a time.

Q. Don't you know that they can simply lift it up and put it on?

A. They stop the work to put it on.

Q. Stop the work to put it on?

Objected to. Objection overruled.

Q. Stopped the work to put it on those rollers?

A. Yes, many times.

Q. Do you mean to tell me, Mr. Friel, that you have seen the work shut down there and the Inter-Island Company stop on many an occasion when the cable simply got off the rollers in the center of the mauka and Waikiki tracks?

Objected to.

(Testimony of Edward B. Friel.)

A. Yes, I have. [380—302]

Q. You have? A. Yes.

Q. And how long was it stopped?

A. During my time of employment there—

Objected to as not proper cross-examination.

Objection sustained.

Mr. DOUTHITT.—You observed that, Mr. Friel?

A. Yes.

Q. On many occasions?

A. On many occasions.

Q. It didn't affect the cable in running around the dollies?

A. When the work was stopped, sure it did.

Q. Did they have to lay off?

A. It had to be stopped until it was put back again.

Q. Until it was put back on those rollers?

A. On those rollers, that is right.

Q. Will you tell me what it was that caused the cable to come off the rollers. I am not talking about the pulleys now, I am talking about rollers?

Objected to as not proper cross-examination.

Objection sustained.

Q. And when the cable would come off of what you call the rollers, or dollies? A. Yes.

Q. And when they got off these, calling your attention to exhibit No. 4 of defendant, then the whole work had to be stopped to replace that cable?

A. That is right, that stopped it.

Q. And as I further understand you, Mr. Friel, about what time of the day was it when you were

(Testimony of Edward B. Friel.)

having that conversation with Mr. Ward and Cameron up there?

A. As near as I can remember it was between nine and ten, a little after nine.

Q. A little after nine?

A. Between nine and ten.

Q. There was a coal boat being discharged right down here on that occasion?

A. That is right, I was checking the coal.

Q. And you were checking the coal. Prior to that time the coal boat was busy or the buckets were busy taking the coal out [381—303] out of the hold of the ship, were they not?

A. Yes, sir, and we were weighing it.

Q. You were busy, Mr. Friel, checking coal at this scale-house? A. Yes, sir.

Q. And you were kept pretty busy, were you not? That coal-conveyor was being run to take the coal out as expeditiously as possible, was it not?

A. Yes, sir.

Q. And you were busy all the time checking your coal and weighing the coal and tallying it with the custom-house inspector?

A. As fast as it came along.

Q. And it was coming along pretty fast, wasn't it?

A. Not all the time.

Q. Not all the time? A. Not all the time.

Q. And these buckets were coming, were they?

A. When they got them filled down below, yes.

Q. They were constantly coming up, the buckets were coming up to be dumped in the hoppers the

(Testimony of Edward B. Friel.)

coal in the top? A. Yes.

Q. On both towers? A. Yes.

Q. Both towers were working?

A. That is right.

Q. Which scale were you working at?

A. On the Waikiki scale.

Q. And Cameron was there on the Waikiki scale, was he?

A. Yes, he was doing the weighing while I was doing the checking. The custom-house officer always weighs.

Q. And you say that five or ten minutes before that accident happened to Ward he was up there talking to you and Cameron? A. Yes.

Mr. STANLEY.—I object to the question that *it putting* words in the witness' mouth. The testimony is ten or fifteen minutes. I move that the answer be stricken.

Motion granted.

Q. How long were you up there talking with Ward before that [382—304] cable came off?

A. I cannot exactly tell the time, perhaps ten or fifteen minutes.

Q. During all the time you were standing there doing nothing, just talking to you and Cameron?

A. No, the coal came along but we kept talking, we didn't need to stop our weighing to talk to him.

Q. Now, Mr. Friel, you are engaged every time the coal boat came in to check coal there or to tally coal for the Inter-Island Steam Navigation Company? A. Not every time.

(Testimony of Edward B. Friel.)

Q. But mostly, were you not?

A. A great deal of the time.

Q. A great deal of the time. And Ward, during the time that these coal boats came in was generally engaged on the ship, was he not?

Objected to as not proper cross-examination.

Objection sustained.

Q. At the time, on the morning of this accident, Mr. Friel, Mr. Ward was down in the coal ship tallying coal prior to being up there, was he, if you know?

Objected to as not proper cross-examination.

Objection sustained.

Q. Do you know where he came from when he came up to the scale-house to talk to you, from what direction on the coal-conveyor did he come?

A. He came from the lower part of the coal-conveyor towards the sea side.

Q. Towards the sea?

A. Yes, that is where he came.

Q. Well, there was that boat laying alongside, was there not? A. Yes.

Q. Did she cover the makai tower and the mauka tower?

A. Well, I think they were both working, both towers were working.

Q. Now, if your both towers were working they had to take coal from the forehatch and afterhatch?

A. There are two [383—305] hatches working.

Q. The hatches covered the two towers?

A. Very often the hatches are so that they could

(Testimony of Edward B. Friel.)

work out of two hatches at one time.

Q. And the vessel is between the two towers covering the two towers, that is what you mean?

A. I wouldn't say that the vessel was between the two towers, there was two hatches working.

Q. Including the two towers alongside as she lay alongside the dock?

A. All I *can was* there are two hatches working, I cannot say that two towers are right near aft of the vessel or not.

Q. Where did Mr. Ward come from, if you know, before he got to the scale-house?

Objected to as asked and answered. Objection sustained.

The COURT.—He said that he came from forward.

Mr. DOUTHITT.—Forward, what do you mean by that?

A. The lower end towards the sea, from seaward.

Q. The top of the coal-conveyor or below?

A. The top of the coal-conveyor, that is where I saw him first.

Q. You say he came from the top; on the track, down these tracks?

A. I don't know where he came from but he came from below there, that is all.

Q. What do you mean by below?

A. He came from the lower end of the conveyor.

Q. From the top of the conveyor?

A. Of course, the top of the conveyor.

Q. Down to the scale-house? A. Yes.

(Testimony of Edward B. Friel.)

Q. And coal was being constantly discharged all the time? A. Yes.

Q. Don't you know, Mr. Ward—Mr. Friel, that at that time Mr. Ward was engaged superintending the discharge of coal from [384—306] the vessel's hold and was in the hold of the ship?

Objected to as not proper cross-examination.

Objection sustained.

Q. Is it not a fact, Mr. Friel, that at the time, just immediately prior to going up on that scale-house that Ward was in the hold of that ship, or on the deck of the ship, discharging coal or superintending the discharge of coal?

A. I could not say that.

Q. You could not say that? A. No.

Q. Is it not a fact, Mr. Friel, that somebody called out to him that the cable was off and that he came up from the deck of the ship on the scale-house and walked in the direction of the makai end where the cable was off? A. No, sir.

Q. That is not so?

A. No, sir, that is not so.

Q. Then, if I understand your testimony, you were there for about ten or fifteen minutes at the scale-house; that Mr. Cameron and you were at the scale-house for ten or fifteen minutes?

A. I was there all the time.

Q. And when the cable came off immediately walked in a makai direction towards the end of the coal-conveyor? A. Yes.

Q. And that you walked to within twenty or

(Testimony of Edward B. Friel.)

thirty feet? A. Yes, about that.

Q. Were you under the tower or were you mauka of the tower? A. Just at the end of the tower.

Q. Which end? A. The lower end of the tower.

Q. What do you mean by the lower end?

A. The seaward end.

Q. You stood there for a moment? A. Yes, sir.

Q. And it had no more interest to you? A. No.

Q. And you turned right around and walked back towards the scale-house? A. That is right.

Q. You don't know what happened after you left?

A. No, I [385—307] don't that it right, until I heard the boys sing out.

Q. You heard somebody sing out after you had walked down towards the scale-house and after you got to the position about one hundred or two hundred feet?

A. Yes, about that. I am not exactly certain as to distances, it is about half way.

Q. That was a distance of three hundred feet from the scale-house—to the mauka end of the scale-house?

A. When the boy sung out I looked over and found him laying on the wharf.

Q. Now, did you walk leisurely or how did you walk when you went down towards the scale-house?

A. We walked just as usual, our regular walk.

Q. Why, you just took it easily, didn't you, just like that?

A. I was not in a hurry because there were no cars to be weighed.

(Testimony of Edward B. Friel.)

Q. There was nothing to do, therefore, you were not in a hurry? A. No, I was not.

Q. And you could not do anything, Mr. Friel, therefore you were not in a hurry?

A. No, I was not.

Q. And you could not do anything, Mr. Friel, until the operation of the coal-conveyor had been resumed? A. That is right.

A JUROR.—Do you remember, Mr. Friel, were there any cars on that tower when you were down there?

A. Yes, sir, there was a couple on this side and about the same on the other side where the trolley came off and around the curve there was more too,

Q. There were cars down there?

A. On both sides.

Q. Between where you were standing and where Mr. Ward was standing? A. Yes, sir.

Q. Which track? A. Across on both tracks.

Mr. DOUTHITT.—Then there were cars as I understand you on the makai track?

A. Both tracks. [386—308]

Q. On the Ewa track? A. Yes, sir.

Q. And there were cars on the Wakiki track?

A. Yes, that is right on the curve.

Q. You don't mean on the curve?

A. Right around the curve as you go around the curve.

Q. The cable was traveling in a mauka direction towards the coal yard? A. Yes, sir.

Q. And were there cars under the towers?

(Testimony of Edward B. Friel.)

A. There were cars, yes.

Q. And was there a car makai of the tower?

A. Yes, there was.

Q. There was a car? A. A couple of cars.

Q. Did you see a car pushed back or anything of that kind? A. Did I what?

Q. Did you see a car pushed back mauka of the Ewa side? A. No.

Q. You didn't see that? A. No.

Q. Will you please explain to this jury, Mr. Friel, how it was possible for you to climb over there and down on the side of that wharf from the position which you occupied on the side of the coal-conveyor?

A. Why, there is a rail there, you can just look down.

Q. How did you get over to the rail?

A. I crossed across.

Q. How did you cross?

A. There is supposed to be a rail here to go across there, and as you look down you look down from the rail.

Q. Do you mean to say that you were in a position then about one hundred and fifty feet between the makai end of the tower and the scale-house, were you? A. About that.

Q. One hundred and fifty feet? A. About that.

Q. Now, you would have to cross over here, wouldn't you? A. Yes. [387—309]

Q. You would have to go—did you get on this rail here?

A. I crossed across there to that and we stood

(Testimony of Edward B. Friel.)

something like there and looked over the rail and saw him down at the end there.

Q. Looked over which end?

A. The rail, the same rail if it is there now, why it must be there.

Q. What did you mean, did you look over this or what did you look over?

A. Well, the rail was there.

Q. What rail?

A. There is a rail down there now.

Q. Is that the rail you looked over?

A. If this is the rail I looked over. Now, it must be.

Q. Mr. Friel, that is an exact replica of the coal-conveyor as it stood at that time?

A. We looked over, we both saw him down there on the ground.

Q. And do you mean to say that you could look through there down and see a man lying there on the ground? A. Why not?

Q. Then, you could look down as I understand you, from your position, that you could look down through the coal-conveyor and see a body lying twenty-five feet on the dock below from the top of that coal-conveyor?

Objected to as already asked and answered.

The COURT.—Not through the coal-conveyor Objection overruled.

A. I did not say that I looked through the coal-conveyor.

Q. What did you say?

(Testimony of Edward B. Friel.)

A. I said I looked over the side of the rail and I could see him lying down there on the ground.

Q. What rail did you look over?

A. Well, the rail, if that is the same rail that is there now. No, that is the one, I think it's that. There is where I went down, we went on there and looked over there, we looked over this outside rail and looked down.

Mr. COKE.—You got on this outside planking here and looked [388—310] over this rail?

A. Yes.

Mr. DOUTHITT.—You got on the outside planking, you say? A. That is right.

Q. And you looked over that outside planking to the dock below? A. Yes.

Q. What is the distance between the outside planking to the ties of this track?

A. Well, the outside planking I think is, I think it is two boards wide, they are sixteen inch boards, something like that. It is wide enough for a man to stand on.

Q. How far is the beginning of this outside rail from the ties, from the outside planking to the ties?

A. I could not tell you how far it is. It is far enough to go out on the planks.

Q. How did you get from that track, Mr. Friel, to that outside plank or footpath, whatever you may call it?

A. Well, there is a way of getting out there.

Q. How did you get out? A. We got out there.

Q. Let us find out how you got out there?

(Testimony of Edward B. Friel.)

A. You could get underneath here if you like to get out for that matter, or you could go around the other end for that matter.

Q. How did you get out?

A. I got out through this side over here somewhere and we looked down and saw the man.

Q. You say that you got out?

A. I could get out underneath the rail if no other way.

Q. Mr. Friel, I would like to have you explain to this jury how it was possible for you to get out upon that footpath?

A. I know I got out there whether I got underneath here or over the top of it, I am not sure but I know that I got out there on the plank and we looked down there and saw him.

Q. Then, you say that you are not certain, Mr. Friel, that you are not certain as to whether you were on that plank or not?

A. No, I am not positive now, I say, * [389—311]

Q. And you are unable to tell this jury how it was that you got out on that foot-rail?

A. I think I told you that I got underneath or over it, because I stood on the boardpath, Cameron and I, and looked over and saw the body.

Q. So you are unable to state to this jury at the present time how you got out there?

A. Well, I have already told them.

Q. No, you have not, Mr. Friel?

A. Well, I got out there, I was out there, that is all. We both saw him laying down there on the

(Testimony of Edward B. Friel.)

ground and I was the one who gave the orders.

Q. Don't you know, Mr. Friel, from your experience on that coal-conveyor, that the distance between these rails and the plank out there is about six feet? A. I never measured it.

Q. I know you didn't measure it, Mr. Friel, but can't you give us some idea of what it is?

A. No, it didn't interest me so I never measured it.

Q. But, Mr. Friel, you understand what six feet are?

A. Of course I understand six feet, but I never—

Q. Now, don't you know, Mr. Friel, that the distance between these tracks, the outer portion of these tracks to this walk on the outside is a distance of about six feet?

Objected to as already asked and answered.

Mr. DOUTHITT.—Now, approximately, Mr. Friel, I don't want you to go into feet and inches, exactly the number of inches, but I would like for you to give this jury some idea of the distance between the ties and the outside of the rail as shown on this model?

A. As I have already told you, I could not give it.

Q. Was it two feet?

A. It must have been. Yes, it must have been two feet.

Q. Was it three feet?

A. That I could not state. I would not like to go any further because I am not positive. [390—312]

Q. Are you prepared to state, Mr. Friel, that it

(Testimony of Edward B. Friel.)

was not six feet? A. No, I am not.

Q. Then you don't know as a matter of fact what it was?

A. No, because I never took no interest, I never measured it, nothing *on* the kind. I very seldom went down that way.

Q. Now, is it not a fact, Mr. Friel, that the—then for all you know that the ties might be six feet from the outside rail?

Objected to as already asked and answered.

Objection sustained.

Mr. DOUTHITT.—I don't wish to be inquisitive but would you kindly tell us your age?

A. My age, sixty-four next September.

Q. Now, Mr. Friel, when you got down to the makai end, or the distance, we will say, twenty feet from the makai end of the coal-conveyor on the date that Mr. Ward was injured, how many men were there?

A. I would not like to say whether there was four or five, there was either four or five, I would not like to say the exact number of them, but I know there was some men down there either four or five, I am not positive.

Q. Now, you knew the men who were working around the coal-conveyor, did you not?

A. Well, I knew them *them* by sight, yes. Ward I was acquainted with.

Q. You knew Nunu and Kalau?

A. Oh, yes, because he is around the scale a good deal of the time.

(Testimony of Edward B. Friel.)

Q. You knew Merseberg, didn't you?

A. I am not sure.

Q. Charley Merseberg?

A. Yes, sir, I don't know him by that name. I may know him by sight.

Q. Did you know a man by the name of Kalau—besides Ward how many were there?

Objected to as already asked and answered.

Mr. DOUTHITT.—How many Hawaiians were there?

A. Just as [391—313] I have stated, I am not positive whether there was four or five, it may have been four or may have been five, I would not exactly be positive.

Q. And were these Hawaiians on this track here?

A. On this side further in.

Q. What?

A. They were further along this side.

Q. But *there* were all over on the—working at that cable?

A. They were at this end, the Waikiki side, they were on the Waikiki side.

Q. Oh, they were on the Waikiki side?

A. Yes, sir, that is where they were.

Q. But they were Waikiki, but you mean on the Ewa track?

A. No, no, the Waikiki side here. The Waikiki side down here.

Q. This is the Waikiki side? A. Yes, that is it.

Q. They were all over here? A. That is where I noticed them.

(Testimony of Edward B. Friel.)

Q. They were all there? A. Yes.

Mr. STANLEY.—Referring to the planking below the track.

Mr. DOUTHITT.—The engine was stopped, was it?

A. That is right.

Q. And these natives were there on the Waikiki track? A. Yes.

Q. And Ward was there on the Ewa track?

A. Yes, that is it.

Q. He was the only man over there, the Hawaiians were on the Waikiki track? A. That is right.

Q. You walked, Mr. Friel, along the Ewa track or the Waikiki track? A. The Waikiki track.

Q. Going toward the end? A. Yes, sir.

Q. Now, was there anybody there when you got there, was there anybody under the tower?

A. I didn't notice any one.

Q. You didn't notice anybody?

A. Not at the coal tower.

Q. You didn't notice anybody at the coal tower, they were [392—314] all out here at the Waikiki track?

A. Yes, that is what I am telling you.

Q. What you were telling me, and you noticed no one at all under the tower?

A. No, I didn't notice.

Q. What were these Hawaiians doing on the Waikiki track, Mr. Friel?

A. I didn't notice them doing anything.

Q. They were just standing there, were they?

(Testimony of Edward B. Friel.)

A. That is all I saw them doing. I didn't see them doing anything.

Q. They were not doing anything at all?

A. No.

Q. And what was Ward doing?

A. When I turned around to go back he had the crowbar under the cable. When I saw that I turned around and came back, both I and Cameron together.

Q. Ward had the crowbar *and using* it under the cable? A. To bring it back to its—

Q. How is that? A. To bring it back again.

Q. That was the last thing that you saw, Mr. Friel?

A. That *it* all I saw until I—

Q. That is all you heard?

A. Until I heard the—

Q. Until you heard the cry that Ward was dead or something of that kind or had fallen?

A. Or had fallen over underneath the coal-conveyor.

Q. And you were at that time midway between those towers? A. Yes.

Q. Or midway between the scale-house and the makai end of the coal-conveyor? A. Yes, sir.

Redirect Examination of E. B. FRIEL.

Mr. STANLEY.—You have indicated, Mr. Friel, the position of these other men as being on the planking here between the tracks? [393—315]

A. Yes, that is right.

Q. And not as counsel has *repeated* indicated by pointing to these plankings on the track? A. No.

Q. What is the fact, Mr. Friel, were they on the planking here?

(Testimony of Edward B. Friel.)

A. Where you have your pencil now, right on the planking.

Q. Right on the planking between the tracks?

A JUROR.—That is not on the track at all.

A. No, that is where they were there (indicating midway on the planks between the double tracks).

Mr. DOUTHITT.—But toward the Waikiki side?

A. Toward the Waikiki side, not toward the Ewa side, toward the Waikiki side.

Q. On the center of this circle? A. Yes, sir.

Mr. STANLEY.—And whereabouts, Mr. Friel, were the cars that you told Mr. Douthitt were there at this time?

A. About on this side, two on this side and as near as I can remember, two on the other side and these were further around the curve.

Q. Was there anything to prevent your seeing, Mr. Friel, Mr. Ward at the time that you say you were twenty or thirty feet away? A. Nothing.

Q. And in describing the position in which he was in? A. Nothing.

A JUROR.—Coming over to this walk from the ties was it just an easy step from the end of the tie onto that walk? A. Yes.

Q. You just stepped from the ties onto the walk?

A. Yes, sure.

Mr. DOUTHITT.—An easy step, is it?

A. For me.

Q. It was for you? A. Yes. [394—316]

[Testimony of John Gordon Blair Cameron, for
for Defendant.]

Direct Examination of JOHN GORDON BLAIR CAMERON, called for defendant, sworn.

Mr. STANLEY.—What is your full name, Mr. Cameron? A. John Gordon Blair Cameron.

Q. Where are you working, Mr. Cameron?

A. Working down at the American-Hawaiian Steamship Company.

Q. Do you remember the occasion of the accident happening to Mr. Ward at the coal-conveyor of the Inter-Island Steam Navigation Company?

A. I do.

Q. About how long ago was that?

A. About two years ago, I should judge.

Q. And what was the accident?

A. Well, they—

Q. What happened to him?

A. He fell off the coal-conveyor down onto the wharf.

Q. Now, had you seen Mr. Ward prior to the accident? A. I did.

Q. Where did you see him?

A. We were up in the scale-house of the elevator talking.

Q. What was your business at that time, Mr. Cameron? A. I was inspector of customs.

Q. What business had you on this coal-conveyor?

A. I was there weighing coal coming out of the ship that came in.

Q. For the United States Customs department?

(Testimony of John Gordon Blair Cameron.)

A. The United States customs.

Q. When you say you were there talking in the scale-house, who was there?

A. Mr. Friel, George, Friel and myself.

Q. You mean Mr. Friel, the old gentleman who just left the court room? A. I do.

Q. And what did you first know of the trouble on the coal-conveyor?

A. The first thing I heard some yelling out [395—317] pilikia.

Q. Where was Mr. Ward at that time?

A. He was sitting in the scale-house above me.

Q. What was he doing in there?

A. Just telling stories and talking, one thing and another.

Q. And how long before you heard the call pilikia had Mr. Ward been there?

A. Well, I should judge about fifteen or twenty minutes.

Q. Now, when there was a call pilikia, what did Ward do? A. Beg pardon?

Q. What did Ward, if anything, do when this shout was heard pilikia?

A. He left the scale-house and walked toward the end of the tower.

Q. What did you do, if anything?

A. I sat there a few minutes and then I got up and walked down below myself.

Q. Alone or with anybody else?

A. Beg pardon?

Q. Were you alone or did anybody accompany

(Testimony of John Gordon Blair Cameron.)

you? A. Mr. Friel was with me.

Q. And in which direction did you walk?

A. Toward the end of the pier, toward the sea.

Q. And then what distance, about the distance—on, I will ask you did you see Mr. Ward there when you went down there? A. I did.

Q. And within what distance of *his* did you get down?

A. Well, about twenty or thirty feet I should judge.

Q. Now, on which side of the conveyor were you on your journey down?

A. I went down toward the middle, then I stepped toward the left a little bit.

Q. Toward the left, that would be Waikiki way?

A. Yes.

Q. And on what did you step?

A. On the track on the Waikiki side.

Q. Now, when you got down to this position that you describe [396—318] at twenty-five or thirty feet away what did you see?

A. I saw the cable carrying cars around was off the rig at the end of the wharf,—at the end of the pier rather, but—

Q. Now, I will ask you to look at this model, Mr. Cameron, you recognize it as the model at the makai end? A. Yes, sir.

Q. It is understood that instead of there being only thirty pulleys here there are sixty on the ring and this would be the makai end?

A. This would be the makai end.

(Testimony of John Gordon Blair Cameron.)

Q. Which pulleys was the cable off?

A. This row over here.

Q. Now, where was Mr. Ward when you got to this position about twenty or thirty feet away?

A. He was standing here, I guess, one leg over here and the other leg over on the other side of the range, as far as I remember.

Q. And which way was he facing, Mr. Cameron?

A. He was facing toward the sea.

Q. And what was he doing, Mr. Cameron?

A. He was at the time trying to put the cable on the rings again.

Q. You indicate that he was standing with one foot on one end of it and the other on the other end of it?

A. No, between the rails.

Q. On the rails I say. State whether or not he was down on the platform below the track?

A. No, sir, I didn't see him down below there.

Q. I will ask you what you went down there for?

A. Well, I just went down to see what the trouble was.

Q. And you saw that the cable was off the trolleys, what did you do then?

A. I walked up to the scale-house again.

Q. What did you do then?

A. I walked up to the scale-house again.

Q. What did you next do, did you reach the scale-house? [397—319]

A. I did.

Q. You got to the scale-house? A. I did.

Q. And what did you next hear?

(Testimony of John Gordon Blair Cameron.)

A. Well, the next thing I heard somebody yelled out George make.

Q. Where were you, Mr. Cameron, when you heard that? A. I was *on* the scale-house.

Q. Did you see Mr. Ward out there?

A. Beg pardon?

Q. Did you see Mr. Ward out there?

A. I didn't see him at that time, no, until I went on the other side of the elevator.

Q. You went on—on which side of the elevator were you *in* in the scale-house?

A. On this side, the Waikiki side.

Q. And then you say that you didn't see him until you went over to the Ewa side? A. Yes.

Q. How did you see him then?

A. I looked there right under the elevator and I saw him lying down on the wharf down below.

Cross-examination of JOHN GORDON BLAIR CAMERON.

Mr. DOUTHITT.—Mr. Cameron, Mr. Friel was with you, was he?

A. Yes, he was.

Q. And Mr. Friel came along with you and walked back with you? A. He did.

Q. And you walked back leisurely? A. Yes, sir.

Q. And you did not hurry, there was no necessity for hurrying? A. None at all.

Q. Your work was temporarily stopped and you had to wait until the conveyor started up again?

A. Until they started up.

Q. Until the work was resumed you could do noth-

(Testimony of John Gordon Blair Cameron.)

ing? A. Yes. [398—320]

Q. And you and Mr. Friel walked leisurely along on the coal-conveyor back to the scale-house?

A. Yes.

Q. And Mr. Friel was with you? A. Yes, sir.

Q. Now, there is a large platform, is there not, Mr. Cameron, at the scale-house around here for example quite a wide platform? A. Yes, sir.

Q. You walked over to here and looked out, did you? A. Yes, sir.

Q. You looked out there? A. Yes, sir.

Q. You did not go down on this footway at all?

A. I don't remember, no.

Q. You didn't, did you?

A. I don't remember to have.

Q. Now, Mr. Cameron, is it not a matter of fact that when you heard that call and you were at the scale-house you went across there on the Ewa side where this platform is and looked down there and saw the body there laying at the makai end?

A. What body?

Q. You didn't go down on this footpath, there was no necessity of going down on the footpath to look over? A. Not that I know of.

Q. And Mr. Friel and both of you were engaged in the operation at that time, that is the both of you were engaged in tallying sugar, you for the custom-house— A. We were weighing coal, I believe.

Q. And Mr. Friel on behalf of the Inter-Island Steam Navigation Company?

A. Yes, sir, so I believe.

(Testimony of John Gordon Blair Cameron.)

Q. You were working for the custom-house, Mr. Cameron, at the time? A. Yes.

Q. And when you heard the crying out of somebody George make, Mr. Friel and you immediately stopped and went over to see that? A. Yes, sir.

Q. Both were there at the same time?

A. Yes, sir.

Q. Now, Mr. Cameron, when you got out here at the end there [399—321] was no particular occasion of paying—there was no occasion to pay any particular attention to what was going on there, was there? A. No, not that I noticed.

Q. Not that you noticed?

A. I just saw what the trouble was and I started walking back.

Q. Well, you are not absolutely prepared to swear as a matter of fact, as the absolute fact, that Ward had his legs over the cable? A. I am.

Q. You are? A. I am.

Q. When you saw it? A. When I saw it.

Q. And he stood there with a bar in his hand, did he? A. He did.

Q. Did he have the bar in his hand like that?

A. No, he was trying to pry the cable back over the rings.

Q. And the natives where were they?

A. They were scattered all around.

Q. Were they not on this side sitting down near the planks? A. I didn't notice them.

Q. You didn't notice them?

A. I noticed some below him and some on this side of him.

(Testimony of John Gordon Blair Cameron.)

Q. Some below and some on this side of him?

A. Yes.

Q. And you were on the Waikiki track, you say?

A. I was.

Q. And which one was the first toward you?

A. I could not say, I did not know any of them.

Q. Was it Ward or one of the Hawaiians?

A. One of the Hawaiians, as I recollect.

Q. Who was next to the Hawaiian?

A. Well, I don't know how many Hawaiians were between me and Ward but I could see Ward very plainly.

Q. The Hawaiians were between you and Ward?

A. Not exactly between, they were on the side a little mauka, I could see Ward very plainly.

Q. Ward? A. Yes. [400—322]

Q. Is it not a fact that the Hawaiians at that time were down there on the planking below the coal-conveyor?

A. I didn't look over that way, I was looking toward the track.

Q. You gave one quick glance like that and just stood there casually for a second and walked off?

A. Probably two or three minutes, and I saw the cable was off and I started to walk back. It was none of my business anything there.

Q. You didn't stay up there any length of time to see what was done afterward, did you? A. No.

Q. When you walked back then to the scale-house, which is a distance of three hundred feet from the makai end of this coal-conveyor to the scale-house,

(Testimony of John Gordon Blair Cameron.)

is it not? A. I don't know the distance.

Q. Well about? A. Probably.

Q. To your best recollection what is it, three hundred feet?

A. Well, I should judge about two hundred and fifty, something like that.

Q. You judge it would be about two hundred and fifty, and you walked back talking leisurely, I presume, with Mr. Friel? A. Yes, sir.

Q. And when you got back to the scale-house did you sit down? A. And sat down.

Q. And Friel sat down too?

A. Yes, I think he did.

Q. That is your best recollection?

A. The best recollection that I can remember, yes.

Q. As you went out there, Mr. Cameron, who was ahead, was Friel ahead or were you ahead?

A. I cannot say as to who was ahead either he or myself.

Q. And you were with him right there, were you not?

A. We were together all right, and whether he was a little ahead or whether I was ahead of him I cannot say.

Q. But you were both approximately together?

A. Yes. [401—323]

Q. And where did you go to and stop with reference to this tower, for example?

A. Well, between twenty and thirty feet from the end I should judge.

Q. Do you mean from the makai end, Mr. Cameron?

(Testimony of John Gordon Blair Cameron.)

A. I mean twenty or thirty feet from where Ward was at the time.

Q. Twenty or thirty feet, you stopped there?

A. Yes, sir.

Q. You stopped there twenty or thirty feet from where Ward was at? A. I did, yes.

Q. Under the tower?

A. I cannot say whether the tower was in that position or not.

Q. You don't know whether you were under the tower? A. No, I could not say.

Q. And you don't know whether you were mauka of the tower or makai of the tower? A. No.

Q. You don't know, Mr. Cameron, who, as you stood there, who was nearest to you, nearest to Ward?

Objected to as he has already testified he cannot say.

Q. Do you know? A. No, I don't know.

The COURT.—Of the employees?

That is objected to as already asked and answered.

Objection sustained.

Q. Do you know the names, Mr. Cameron?

A. No, I do not.

Q. And who was nearer Mr. Ward, you or Mr. Friel? A. I cannot say.

Q. Did you hear anything said or *anything*?

A. No, sir.

Q. Nothing said by anyone there that you heard?

A. All that I—

Q. That you heard? A. No, not that I heard.

(Testimony of John Gordon Blair Cameron.)

Q. Your hearing—nothing wrong with your hearing is there, Mr. Cameron? A. I don't think so.

Q. Is it a fact—I understood your testimony, Mr. Cameron, is that you turned around and walked back with Mr. Friel to the [402—324] scale-house?

A. Yes, sir.

Q. Both of you together? A. Yes, sir.

Q. And you stayed there?

Objected as already asked and answered.

Objection sustained.

Q. Now, I will ask you whether as a matter of fact at any time that you crossed over that track and got onto this outside railing?

A. I do not remember.

Q. Well, what do you mean, Mr. Cameron?

A. I do not remember having got down on that rail at all, all I remember is going across to the scale-house.

Q. Well, then, if you had you would remember it, wouldn't you?

A. Well, I might, yes, but I don't remember going down there at all.

Q. You don't remember whether Friel went down there, do you? A. No, sir, I don't.

Q. Do you mean to say that he did not or that he did?

A. I don't say anything with regard to Friel.

Q. Friel was right there with you?

A. Well, when I went there to look I wasn't paying attention to Friel at all.

Q. When you went there to look you weren't pay-

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(Testimony of John Gordon Blair Cameron.)

ing attention to Friel?

A. No, I went there to see what was the trouble down below.

Q. But you and Friel walked down towards the scale-house when you left the makai end?

A. Yes.

Q. You didn't pay any particular attention to the time that Ward was up there at the scale-house, that he was there, did you? A. No, sir.

Q. You didn't time it, of course, there was no necessity for it? A. Not at all.

Q. So that when you say fifteen or twenty minutes, Mr. Cameron, that is merely a guess or your speculation? A. That is all. [403—325]

Q. Do you remember what time of the day it was?

A. No, I did not, it was in the morning some time.

Q. Well, was it around noon?

A. Well, I cannot say whether it was around noon or not, as far as I remember it was about the middle of the forenoon.

Mr. STANLEY.—When you say, Mr. Cameron, a guess or speculation at the time you mean that is your best judgment?

A. That is my best judgment, yes.

A JUROR.—After you came back to the scale-house and sat down with Mr. Friel do you know about how long that you stayed there before you heard that cry? A. I do not.

The further hearing of this case was continued until 8:30 o'clock to-morrow morning. [404—326]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, A. D. 1914, Term.

June 5th, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

**[Testimony of N. E. Gedge, for Defendant
(Recalled).]**

Direct examination of N. E. GEDGE, recalled for the defendant.

Mr. STANLEY.—Mr. Gedge, you have testified that you are a resident of Honolulu and treasurer and secretary of the Inter-Island Steamship Company, a corporation, in this city? A. I have.

Q. How long have you been connected with that company?

A. About a little over thirty-one years.

Q. And in what capacity were you first employed there?

A. As a minor clerk about the office in a minor position at the office. I started as a youngster with them.

Q. And after that?

A. I have been assistant bookkeeper. Bookkeeper and finally bookkeeper.

(Testimony of N. E. Gedge.)

Q. What?

A. I have been assistant bookkeeper, bookkeeper and finally secretary and then treasurer as well as secretary.

Q. And how long have you occupied the position of secretary and treasurer?

A. I suppose somewhere about sixteen or seventeen years.

Q. And what are your duties, Mr. Gedge, as secretary and treasurer [405—327] of the company?

A. I have charge of the finances of the company, the record of stock transfers, the records of all meetings, the books and accounts of the company, clerical affairs of the company in the main office, also all the pursers and freight clerks, the clerical force in the Oahu offices at the Marine Railway and at the coal-yard and have the supervision over the coal business of the company.

Q. What?

A. And a supervision over the coal business of the company.

Q. What do you mean by the coal business of the company?

A. Well, I handle all the correspondence in connection with the purchases of coal and matters of that description.

Q. State whether or not, Mr. Gedge, you have ever received any training as a machinist or engineer.

A. I have not.

Q. Have you ever done any mechanical, machine or engineering work? A. No, none.

(Testimony of N. E. Gedge.)

Q. Now, you are familiar, of course, with the plant—the coal plant and conveyor of the Inter-Island Company? A. I am.

Q. When was that erected?

A. I believe in the latter part of 1908 and went into operation about May or June of 1909.

Q. And who actually erected the coal-conveyor for the company?

A. Mr. Ouderkirk erected the wood work and Mr. Ward erected the steel work, the erection and cable and dollies and all such things in connection with it.

Q. Now, what if any, connection, Mr. Gedge, have you or had you—after the erection of the coal-conveyor of the plant, what if any connection had you with this coal-conveyor plant?

A. Just the same as I had at the Marine Railway about the wharves and other outside operations of the company.

Q. Now, what do you mean by that?

A. I kept myself posted as to the progress of the work and saw that it went along smoothly and that our agreement with the ships were being lived [406—328] up to.

Q. What do you mean by your agreement with the ships?

A. Well, in the purchase of coal we have to guarantee a certain amount of discharge per day, a certain number of tons must be discharged per day, otherwise we will be subject to demurrage.

Q. And what was that demurrage, what would it amount to?

(Testimony of N. E. Gedge.)

A. Well, it amounts to—it depended a great deal on rates of freight, it was from eight cents a fraction over eight cents per registered ton, sometimes over twelve cents.

Q. On a vessel then say of five thousand tons what would that demurrage amount to?

A. On a vessel of five thousand tons that demurrage would amount to four hundred dollars per day.

Q. Now, what, if anything, had you to do with the coal ships?

A. I would always meet the captains on arrival and with the custom-house broker would arrange for the entrance of the ship, or the cargo at the custom-house, if necessary, and would also make arrangements as to the charges which would be for weighing, wharfing and stevedoring. I would also invariably introduce Mr. Ward to the captain of the ship as the company's representative of the company's coal plant and would request the captain to request his chief officer to move his ship whenever Mr. Ward desired to have it done.

Q. Subsequent to the erection of the coal-conveyor who was in charge of the plant looking after the mechanical operation of it? A. Previous to the—

Q. Subsequent to the erection of the conveyor who was in charge of the plant?

A. We had no conveyor plant down there at that time, we simply had a coal-yard and we carted the coal.

Q. Subsequent means after you know?

A. Oh, I did not understand you. [407—329]

(Testimony of N. E. Gedge.)

Q. After the erection of the conveyor who was in charge, who, if anybody, was in charge of the coal-conveyor and plant?

A. Mr. Ward was in charge of the coal ships discharging and when there were not any coal ships discharging we just had the luna down there, a man by the name of Maguire first and then Akina afterwards.

Q. Who placed Mr. Ward in charge of the conveyor? A. Mr. Muirhead.

Q. Who is in charge of the coal-conveyor?

A. Mr. Muirhead. Mr. Ward was directly under Mr. Muirhead. By Mr. Kennedy's orders Mr. Muirhead placed him in charge.

Q. And at what time would Mr. Ward be in charge of that coal-conveyor?

A. Whenever a coal vessel came in to be discharged.

Q. And how long did that connection of Mr. Ward with the coal-conveyor continue?

A. Until the time of his accident, as long as he was in the employ of the company.

Q. That would be about how long? Do you remember the date of the accident?

A. In July it would be about three years, if I remember correctly.

Q. That is the conveyor was erected—was completed about June in 1909?

A. Yes, as I understand about July of 1909, and his accident occurred about July, 1912.

Q. Now, do you know what Mr. Ward's duties

(Testimony of N. E. Gedge.)

were in connection with the coal-conveyor?

A. Yes, I do. He had full charge of the operation of the plant, kept the plant in order, did all the necessary repairs and looked out for the work so that it would not be delayed.

Q. If any repairs had to be made on the coal-conveyor, while coal vessels were in, or any other time, whose duty was it to see that those were made?

A. Mr. Ward.

Q. If any gear had to be replaced whose duty was it to see that it was replaced in the proper time?

A. Mr. Ward's duty. [408—330]

Q. What, if any, connection, Mr. Gedge, had you with the repair work, or the work of putting in or seeing that gear was put in?

A. I had nothing to do with it further than if I was told about it to report it that is all.

Q. Now, Mr. Gedge, that—how many sets of men had you working down there at the coal-conveyor?

A. Well, there was the regular gang working there in ordinary times, extra gangs were taken on when a coal ship was discharging.

Q. What do you mean, Mr. Gedge, by saying in ordinary times?

A. When it is just used for bunkering our own steamers or filling orders, a regular conveyor gang.

Q. That is, there were not foreign coal vessels in and the conveyor was merely being used for the purpose of local orders for coal?

A. Just local orders, yes.

Q. Or bunkering your own steamers?

(Testimony of N. E. Gedge.)

A. Bunkering our own steamers.

Q. There was one gang employed? A. Yes.

Q. And then extra men employed for the foreign coal ships when they came in? A. Yes.

Q. Bringing coal here? A. Yes.

Q. Who had charge of the ordinary gang?

A. Their luna down there.

Q. At all times or just what you call the ordinary times?

A. He had charge when the coal ship was not in, just for doing ordinary work.

Q. And when the coal ship was in under whose orders was it then—were the ordinary gang?

A. They were all subject to Mr. Ward's orders.

Q. And when the coal ships were not in where would these men be employed?

A. What, the regular gang?

Q. Yes.

A. They would be employed at the conveyor bunkering steamers and cleaning up, any old thing.

[409—331]

Q. During these times that the coal ships would not be in who would employ the gang on the elevator, on the conveyor?

A. The luna down there in charge if he had to have men. They had a regular gang there that had been there for a long, long time most of them, but if one of them left he would simply get another man in his place.

Q. Now, what if anything, Mr. Gedge, had you to do with the giving orders to those men as to what

(Testimony of N. E. Gedge.)

work should be done by them?

A. I never gave the men individually any orders, I would tell the luna down there about our steamers that were coming for bunkers or if we had an order for coal for plantations on the other islands I would tell the luna in charge, Akina, that the steamer would be down there for a hundred tons of coal or Kilauea Plantation or Kekaha Plantation wherever it went to.

Q. For the different plantations on the islands?

A. Yes.

Q. As to the actual work what had you to do with the actual work of the loading of the vessels after you had given orders or anything, if so much coal was required what had you to do with the actual work of seeing whether the vessels were loaded?

A. I had nothing to do with that at all.

Q. What, if anything, had you to do with the question as to how these towers of the coal-conveyor should be operated?

A. That is entirely up to the man in charge.

A JUROR.—Who?

A. Ward, if he is there. Ward would be always there when the ships would be discharging, they would be under his direction.

Mr. STANLEY.—You have heard the testimony of Mr. Akina in this case that you would give him orders as to the moving of these towers from time to time is that so? A. No, sir.

Q. Now, when a coal vessel would come in you say you would employ an extra gang?

(Testimony of N. E. Gedge.)

A. An extra gang would be employed, yes, sir.
[410—332]

Q. Those would be stevedores, I presume and others?

A. Well, there would be an extra gang on the coal-conveyor and there would be stevedores working on board the vessels.

Q. And by whom would those men be employed?

A. The men on the conveyor would be employed by Mr. Akina and stevedores on board the steamer I would employ and take a list of their names.

Q. Now, tell us what you are presumed to do or did when these coal ships were in port?

A. Nothing further than what I told you before, simply watching the progress of the work, seeing that it went along smoothly and that our agreements were being lived up to.

Q. Well, did you do anything, Mr. Gedge, in connection for instance with the taking the time of the men?

A. Well, I used to keep a record of the discharging of cargoes and see what was going on, come up to the scale-house and get the hour that they discharged and kept a record of it for a comparison.

Q. I am talking about taking the time of the men who were working on the coal ship?

A. I checked them off when they went aboard in the morning and when they went aboard at one o'clock in the afternoon and when they came ashore at night. At times that I didn't check them off I had a man by the name of Dick at our scale-house in the

(Testimony of N. E. Gedge.)

yard and I would give him the book and he would check them off and send the book up to me.

Q. What was your object, Mr. Gedge, for being down on board those coal ships?

Objected to; objection sustained.

Q. What, if anything, Mr. Gedge, had you to do while these coal ships were on port after directing the discharge of the different holds?

A. I did nothing as to the direction of the discharging.

Q. What, if anything, had you to do or did you do in connection with giving orders as to the moving of the towers from place to [411—333] place over the different holds? A. I never gave the orders.

Q. By whom were such orders given—were such orders given? A. Such orders were given.

Q. From time to time? A. From time to time.

Q. By whom were those orders given?

A. Mr. Ward would give those orders.

Q. It has been stated here by Mr. Ward, Mr. Gedge, that his duties down there were principally on the coal ship but any orders—when ordered or called he would have to go on the coal ship, is that so? A. No, sir.

Q. As I understand it from you he was in charge of the whole plant while the coal ships were in.

A. He did, he had charge of the whole plant.

Q. And under whose direct orders was Akina during those times?

A. Under Mr. Ward's orders.

Q. Mr. Gedge, you stated that Mr. Ward was hurt

(Testimony of N. E. Gedge.)

about the 8th of July, 1912, state whether or not at that time any coal ships were in port.

A. Yes, sir, there were, there was a coal ship discharging at that time.

Q. Had there been any trouble of any extent between the arrival of that vessel and the previous one—and the departure of the previous one?

A. They were both in at the same time.

Q. And when did you learn that those vessels were expected?

A. The latter part of May and first part of June.

Q. The latter part of May or first part of June?

A. That is we had cables that they were to leave on a certain date and then about the 6th or 7th or 8th of June, they had already started, two of them had ahead started.

Q. Have you any memorandum, Mr. Gedge, by which you would refresh your memory, by which you know that those vessels were expected?

A. I have some cables that they sent us, I think Mr. Sutton has them, I am not sure. [412—334]

Q. I will just ask you to look at those cables which you refer to and state, Mr. Gedge, when you first learned that these coal vessels were definitely expected?

A. The first cable is the expected arrival of the steamer "Mogi," on April 4th.

Q. What is the date of it, refresh your memory as to when you first learned it?

A. On the 31st day of May.

Q. And departure—I don't care about departure.

(Testimony of N. E. Gedge.)

A. On May 31st.

Q. You knew at that time that one vessel was expected to arrive early in June?

A. About the latter part of June. The second one was the steamer "Corona," she was expected on the 31st.

Q. 31st of what?

A. May 31st that she was expected to load and expected to dispatch on the 5th day of June. Another one was the third cargo to arrive, the first news of this cargo was on the 13th?

Q. So that by the end of May, Mr. Gedge, I understand you now, you had three coal vessels that were to arrive towards the end of June or beginning of July?

A. Yes, two at the latter part of June and one at the end of July.

Q. Before leaving that I just want to ask you one question to clear up, to testify Mr. Gedge, that you had nothing to do with the directing of how these towers were to be moved or where they should be moved; I will ask you had you anything to do, Mr. Gedge, as secretary and treasurer of the company or watching things on the outside with the stationing of men at the different positions around the towers or in the ship? A. No, sir, absolutely nothing.

Q. Now, just to go back to the coal vessel, you say that stevedores were employed there when a vessel would be in for the purpose of seeing to the discharge of cargo, state whether or not there were any foreman over those stevedores?

(Testimony of N. E. Gedge.)

A. There was [413—335] always a foreman over the gang, each gang.

Q. Now, a vessel being unloaded, how many foremen have you?

A. Two, always working two gangs at one time.

Q. And what were the duties of these foremen?

A. To see that the men attend to their work and carried on the work properly.

Q. In the different holds? A. Yes.

Q. Now, Mr. Gedge, do you remember the fact of the installing of a new drum at the conveyor prior to the arrival of these three vessels, the arrival of which you received notice of as early as May 31st?

A. Yes, I remember that.

Q. Do you know when that drum was installed?

A. It was installed about the 5th or 6th day of June.

Q. Now, state whether or not you had any conversation with Mr. Ward or anybody else in connection with the installing of that drum and let the jury know the circumstances connected with the conversation.

A. Why, at the conveyor, Mr. Akina called my attention to the fact that the drum was worn and that the cable was tangled on the drum and pointed out just what he thought was the cause of it, and I told him—

Q. What did he say, Mr. Gedge, you say pointed out what he thought was the cause of it. What did he say was the cause of it?

A. He said because the drum had worn the

(Testimony of N. E. Gedge.)

shoulder on it, I don't know exactly what he meant, it was the wearing of the drum.

Q. And that was the cause of it, did he say?

A. That was the cause of the cable tangling on the drum.

Q. All right, what did you say?

A. I told him that I would see Mr. Muirhead and have Mr. Ward sent down to examine it.

Q. Where was Mr. Ward working, was there a coal ship in at that time?

A. No, there was not a coal ship in at that time.

Q. Where was Mr. Ward working when the coal ship was not in?

A. At the machine-shop. [414—336]

Q. Under whose direct supervision?

A. Mr. Muirhead.

Q. Well, having told Mr. Akina that, what did you do?

A. I went up to the shop and Mr. Ward went down and put the new drum in, examined it, then said the new drum had to go in and he put a new drum in.

Q. Now, was any suggestion made to you at that time—oh, I will ask how long was this before the drum was restored—how long were these conversations, the conversation with Akina before the drum was installed?

A. I think the drum was restored—was installed the same day.

Q. Where was that drum kept prior to being installed?

(Testimony of N. E. Gedge.)

A. We always have one or two drums right in the engine house.

Q. State whether or not any suggestion was made by Akina during the conversation before you saw Mr. Ward that the new cable should be put in.

A. No, sir, absolutely none.

Q. If such a suggestion had been made, state whether or not there was any cable that could have been put in.

A. Yes, sir, there is always a spare cable right in position ready to put in at any time.

Q. Where is the spare cable kept?

A. Right in front of the engine-house.

Q. On the wharf?

A. On the wharf, under the conveyor.

Q. Did you at that time promise Akina or state to Akina that a new cable would be put in?

A. No, sir, I did not.

Mr. DOUTHITT.—There is no statement of that kind in this record, we do not claim that. Mr. Akina never said that Mr. Gedge promised to put in a new cable.

Mr. STANLEY.—Now, Mr. Gedge, when Mr. Ward—were you present when Mr. Ward examined the drum at the coal-conveyor?

A. Yes, sir, I was there.

Q. State whether or not you were present—I will ask you who installed the new drum?

A. It was installed under [415—337] direction of Mr. Ward.

Q. Who was present when it was being installed?

(Testimony of N. E. Gedge.)

A. The workmen about the place, I could not tell you just who it was.

Q. Where was Mr. Ward?

A. In the engine-house.

Q. State whether or not at the time that Mr. Ward came—I understand Mr. Ward went down with you to the engine-house, did he?

A. I would not be positive, probably I did drive him down if I happened to have the use of the automobile I would have taken him down.

Q. State whether or not at the time that Mr. Ward examined the drum or at any time while the drum was being installed under his supervision any complaint was made by Mr. Ward as to the condition of the cable.

A. No, sir, there was no complaint whatever.

Q. State whether or not at either of those times any suggestion was made by Mr. Ward that a new cable should be put in. A. No, sir.

Q. If such a suggestion had been made by Mr. Ward would you have put in a new cable?

A. Mr. Ward could have put the new cable in.

Q. What is that, Mr. Gedge?

A. I say Mr. Ward could have put the new cable in.

Q. State whether or not there was any necessity for Mr. Ward to consult you before putting in the new cable or a new drum.

A. No, he didn't have to consult me.

Q. As I understand, no complaint was made to you about it? A. No, sir.

(Testimony of N. E. Gedge.)

Q. Mr. Ward has testified in this case that Mr. Akina—that Mr. Ward said to you when he was examining the drum that you had to put in a new drum and a new cable and that you said that never mind the cable we will put in a new drum and he said all right, I will follow your instructions. Did anything of that kind happen? A. No, sir. [416—338]

Q. I will ask you whether or not—you at that time, did you and testified that coal vessels were expected towards the end of June? A. Yes, sir.

Q. State whether or not, Mr. Gedge, any inspection or overhauling was made of the conveyor prior to the arrival of those vessels. A. Yes, sir.

Q. When did the first of those vessels arrive?

A. About the 26th day of June.

Q. And about when was this overhauling and inspection made?

A. About the 20th of June or 21st, somewhere around there.

Q. And do you know by whom or under whose supervision that inspection was made?

A. By Mr. Ward.

Q. What exactly, Mr. Gedge, do you mean by an inspection?

A. Well, I had instructions from Mr. Kennedy, the general manager, that whenever a coal steamer was expected that I was to have Mr. Ward—Mr. Muirhead send Mr. Ward down to the coal-conveyor to see that everything was in proper order.

Q. That everything was in proper order?

A. Yes, sir.

(Testimony of N. E. Gedge.)

Q. What do you mean by everything?

A. Everything in connection with the conveyor to be in proper order so as to discharge the vessel.

Q. Now, how do you know that the inspection and overhauling in this case somewhere about the 20th of June, was made by Mr. Ward?

A. I saw Mr. Ward down there.

Q. State whether or not any complaint was made by Mr. Ward as to anything at the conveyor at the time of that general inspection and overhauling?

A. No, sir, no complaint.

Q. You were down there every day, I understand, or almost?

A. Yes, sir, once a day, sometimes I was down there twice a day often.

Q. That would be when there would be no coal vessel in?

A. When there would be no coal vessel in I would go down there every morning, sometimes afternoon, too. [417—339]

Q. Would you be down there more or less often than when a coal vessel would be in?

A. Less frequently, I wouldn't be down there as frequently during our work as when there would be a coal vessel in.

Q. Now, you say no complaint was made by Mr. Ward that there was anything wrong with the coal-conveyor? A. No, sir.

Q. Did Mr. Ward express himself at all to you as to the conditions of things down there? A. Yes.

Q. To what effect?

(Testimony of N. E. Gedge.)

A. He stated that everything was in good order.

Q. How did the work, Mr. Gedge, after the arrival of the first coal ship on June 26th progress?

A. Rapidly.

Q. State whether or not there was any trouble out of the ordinary with the plant. A. No, sir.

Q. The appliances there? A. No, sir.

Q. State whether or not any complaint was made to you prior to Mr. Ward's accident of the condition of the cable? A. No, sir, there was not.

Q. Mr. Gedge, between the time that the new drum was installed and the time of Mr. Ward's accident, had you occasion to observe the condition of the cable? A. Between when?

Q. Between the time the new drum was installed—I will ask the question did you observe when Mr. Ward and Akina were down at the engine-house just prior to the installation of the drum and the time of the installation of the new drum did you observe the condition of the cable?

A. Not particularly.

Q. So far as you could observe what was its condition?

A. So far as I could observe the cable was all right.

Q. It has been testified in this case by several witnesses that—by two witnesses that the cable through its entire length was in such condition that the little wires were sticking out of it through its entire length, anywhere from one-sixteenth of an [418—340] inch up to an inch. It is testified to by Mr.

(Testimony of N. E. Gedge.)

Ward from what he saw of the drum that these wires were sticking out in places, was there anything of that nature from what you observed?

A. I did not observe anything of that nature of the wires sticking out. Very often we see small wires broken laying flat on the cable. That is a common occurrence after it has been in use a long time. I never saw anything sticking out a quarter of an inch or an inch.

Q. Explain to the jury what you mean by little wires laying flat?

A. These wires sometimes crack in going around the pulleys and one thing and another and grips of the cars so far as I know keep them flat, laying flat on the cable there in their place showing the wire.

A JUROR.—Then, you would have to go very close to see that they were cracked?

A. Just standing down and taking a look at it you would see the outside wire of the strand was broken in two, the strand itself, but the outside strand from the excessive use.

Q. You noticed the cracks on them, but still they are together.

A. They would be together, they would not be standing up, the grip of the car—

Q. When the cable is around the drum did you notice whether the cable was in bad shape at all?

A. The cable was not in bad shape as far as I could see.

Q. Nothing sticking out? A. No, sir.

Mr. STANLEY.—One of the jurors has put it a

(Testimony of N. E. Gedge.)

wire sticking out about an inch; was there anything of that condition on the cable when it was on the drum?

A. No, sir. These wires are so small they could not begin to stick up an inch, the wires are very short here.

Mr. DOUTHITT.—Never mind about this, Mr. Gedge, you are not a mechanical expert; we object to the question and object to Mr. Gedge arguing to this jury. [419—341]

Mr. STANLEY.—Did you see, Mr. Gedge, any condition in that cable where the wires were sticking out perpendicular to the face of the cable at all at a distance from one-sixteenth—anywhere from one-sixteenth up to an inch. A. No.

Q. If there had been any such condition, Mr. Gedge, would you have observed it? A. I would.

Q. What was the condition of the cable, Mr. Gedge,—of course, you are not an expert as to its strength or anything of that kind,—but what was its apparent condition? A. It was in good order.

Q. Wait a minute, I say its apparent condition at the time that you saw it on that drum up to the time of the accident to Mr. Ward?

A. It was in good condition.

Mr. DOUTHITT.—We move to strike that out on the ground that it calls for the conclusion of the witness and move to strike the answer out.

Mr. STANLEY.—That is right.

The COURT.—The motion is granted.

Mr. STANLEY.—How did that cable, Mr. Gedge,

(Testimony of N. E. Gedge.)

compare in appearance, we will say, with this cable, with the section of the cable here which has been admitted in evidence; in appearance between the time it was examined on the drum or seen on the drum and the time of Mr. Ward's accident?

A. Well, the cable had been in use a number of months and it would not be the same as a new cable, it was worn.

Q. Now, tell the jury how that wearing was apparent, what were the outward indications of its being worn and to what extent?

A. Well, the surface of it wears down after it has been used, the surface of the cable wears down.

Q. I am not talking about what happens usually with cables, I am asking about what happened in this cable at the time that Mr. Ward was hurt; how did that cable compare in general appearance [420—342] with this section of the new cable; if it is different from it tell us where it is different?

A. Well, there is a difference in the way that the thing has been in service for months and worn down I cannot tell you just exactly—

Q. When you say worn down do you mean that it has become smaller or what do you mean, were there any signs of fraying it or anything of that kind?

A. No, it was probably worn down slightly in diameter, I don't know just how much, but the cable wears off and wears the wires.

Q. You have spoken for instance about some little wires lying down?

A. Yes, little wires broken lying down.

(Testimony of N. E. Gedge.)

Q. And were those apparent on this cable before Ward was hurt? A. Yes, sir, there were some.

Q. But you say there was nothing sticking out or anything of that kind? A. No, sir.

Q. State whether or not any of these strands of the cable had been broken or anything of that kind.

A. No, sir.

Q. And how often, Mr. Gedge, would you have occasion or had you occasion to observe the condition of the cable?

A. Oh, I would be on the conveyor a number of times, I could see the cable running there, I could see the cable when it was not running.

Q. And up to the time that Ward was hurt was the machinery there running, we will say, was the cable doing its work, the ordinary amount of work or otherwise? A. Yes, doing good work.

Q. Was any complaint made to you about the cable at all? A. None whatever.

Q. Or that there were any unusual delays in the progress of the work? A. No, sir.

Q. Mr. Sutton suggests where it was that you had occasion to observe the condition of the cable?

A. On top of the conveyor.

Q. Well, at any particular point or generally?

A. From [421—343] the scale-house that is where I usually stood.

Q. If there had been anything in the appearance of the cable that would indicate that it was worn out or anything of that kind would you have seen it?

A. I am sure that I would.

(Testimony of N. E. Gedge.)

Q. Now, Mr. Gedge, do you mean anything of the cable leaving the trolleys on the Saturday prior to Mr. Ward's accident? A. No, sir, not at all.

Q. If the cable had left the pulleys or trolleys would it have been anything unusual?

A. No, it would not have been.

Mr. DOUTHITT.—At what point?

Mr. STANLEY.—Any place.

The COURT.—Any point at which there are pulleys?

Mr. STANLEY.—Sure.

Q. Mr. Gedge, have you seen that cable off the pulleys? A. I have.

Q. Well, I am speaking, of course, this is prior to Mr. Ward's accident, any other time would be immaterial; how frequently have you seen that?

Mr. DOUTHITT.—That is objected to as incompetent, irrelevant and immaterial, unless the conditions are all shown.

Mr. STANLEY.—We propose to show the condition under which the cable leaves the pulleys from actual observation.

The COURT.—It is for the jury to say whether or not it was due to defects in the cable or the fact that there was some additional strain put on it.

Objection overruled. Exception.

(Last question read.)

Q. Have you seen the cable off the trolleys?

A. I have.

Q. The question is how often have you seen the cable off the trolleys; is that a very rare occurrence?

(Testimony of N. E. Gedge.)

A. Every now and then I have seen the cable off the dollies—off the pulleys.

Q. And what were the conditions at the place where the cable was off. I am not asking you as to any explanation as to how it [422—344] was off or what made it come off, but what were the conditions immediately at the place where the cable was off? A. Cars at the curves—

The COURT.—You stated every now and then, Mr. Gedge, that conveys no idea; how frequently can you say?

A. No, but frequently. I can say almost every time we have had a coal ship come in it has come off. Say five or six times at least, I cannot say.

Mr. STANLEY.—Do you mean five or six times in the three years in which the coal-conveyor was in operation, or what?

A. No, I think probably five or six times in the course of a year, no unusual number.

The COURT.—Your experience has been that the cable has come off the pulleys more frequently when the loaded cars were being hauled mauka than empty cars being hauled makai?

A. No, the empty cars.

Q. You say when the coal ship is in it comes off more than when you are loading your own vessels?

A. Yes, sir.

Mr. STANLEY.—You say that the conditions under which you have seen the cable come off the pulleys is when there were several cars on the curve?

A. On the curve.

(Testimony of N. E. Gedge.)

Q. How close together?

A. One car pushing other empties.

Q. Now, it has been testified in this case, Mr. Gedge—have you ever seen, Mr. Gedge, the cable off the trolleys under any circumstances where there has been no car in the immediate vicinity of the place where the cable has left the trolleys?

A. No, sir.

Q. You have testified with reference to the time of—you said that you know nothing about the cable coming off the pulleys on the Saturday previous to Mr. Ward's accident? A. No, sir.

Q. State whether or not you had any conversation in reference [423—345] to that cable, in other words at any time on that Saturday.

A. No, sir, I did not.

Q. It has been testified—you heard the testimony of Mr. Ward in this case, Mr. Gedge? A. I have.

Q. That on Saturday, this particular Saturday, June 4th, some time in the forenoon, during the noon hour, perhaps, that Mr. Ward told you that the cable had come off the pulleys, I think on account of its worn condition and there being a tendency to climb on the pulleys, and that you said that you would put in a new cable. Did anything of that kind transpire between you and Mr. Ward? A. No, sir.

Q. If a new cable had been put in whose duty was it to have seen that a new cable was put in?

A. Mr. Ward's duty.

Q. Now, Mr. Gedge, state whether or not the cable on which these cars—line on which—the cable of

(Testimony of N. E. Gedge.)

which this coal-conveyor consists of is one or more cables? A. One continuous cable.

Q. And how are the ends joined? A. Spliced.

Q. And in case of anything, either your installing—the company installing a new cable, who would do the—who would do the job of doing the splicing?

A. The actual splicing, Mr. Williamson.

Q. Do you know how that splicing is done?

A. I have seen it done, yes.

Q. What did it consist of?

A. It is a very long splice. I am no expert on splicing. They would take out one strand and lay another back in its place until they finally got to the end. It generally runs from sixty feet to a hundred feet. The ends are then cut inside of the cable.

Q. It is a question of weaving these strands in one another, is it not? A. Yes, sir.

Q. And who is Mr. Williamson?

A. Rigger working for [424—346] the company.

Q. A rigger?

A. Yes, a rigger. He is a chief officer who works at riggings and also aboard the steamers.

Q. Under whose supervision was the installation of the cable when spliced be done?

A. Mr. Ward was always there; it was under his supervision.

Q. Mr. Ward has testified that he had nothing to do with the installation of the cable, that that was done by Mr. Williamson?

A. Mr. Williamson would simply do the splicing,

(Testimony of N. E. Gedge.)

Mr. Ward would put the cable in place. Mr. Williamson would do the splicing.

Q. In case of any splicing coming out, some of the strands of the splicing coming out, that would be done—the replacing of the strands would be done by whom? A. Mr. Williamson.

Q. What was the cost, Mr. Gedge, of a cable such as was in use at the time Mr. Gedge was hurt?

Objected to as immaterial.

Mr. STANLEY.—We propose to show if we are allowed that while the demurrage on that vessel of five thousand tons is somewhere over four hundred dollars, the cost of the cable is so much less that it would be of no advantage to the company not to put in a new cable. We propose to show that if there had been a cable in the condition described that it would be dangerous to work, and not only dangerous to work but would cause delay in the unloading and cause the company a loss of several hundred dollars a day when a comparatively cheap cable could be put in, I mean cheap as compared with the amount of demurrage that the vessel would be paid.

Objection overruled. Exception.

Mr. STANLEY.—What, Mr. Gedge, was at the time of Mr. Ward's accident the cost of a new cable similar in all respects as to strands, diameter and wires?

A. The cost landed here [425—347] in Honolulu, runs from six and a half cents to eight and a half cents a running foot.

Q. The testimony is that the cable was some-

(Testimony of N. E. Gedge.)

thing like twenty-eight hundred feet long. Can you tell us roughly the cost of a cable without having to figure it out?

A. It would be from one hundred and sixty-eight to say one hundred and eighty dollars, for an Eastern cable, where a San Francisco cable would run about eight and a half cents, would be about two hundred and fifty dollars.

Q. A San Francisco cable would run about what?

A. Two hundred and forty dollars, somewhere around there, two hundred and forty.

Q. An Eastern cable, an Eastern cable would cost somewhere about one hundred and eighty dollars?

A. Yes.

Q. Well, what was this cable that you had in operation at the time Mr. Ward was hurt, an Eastern or San Francisco cable?

A. A San Francisco cable.

Q. That would be somewhere around two hundred and forty dollars?

A. Two hundred and forty dollars.

A JUROR.—Can I ask a witness a question? If there was any delay on loading a boat—getting coal out of the boat, was the cause of delay reported to Mr. Gedge, any delay while the buckets were running out?

A. No, it would not be reported to me. If I ain't getting the discharge I would know it in this way, there are so many tons gotten out there. There may be a chain broken—

Q. I cannot understand you.

(Testimony of N. E. Gedge.)

A. I say that I keep an hourly record of the discharge of steamers; if one hour dropped away down I would ask what was the cause of it. Very frequently a chain in the bucket would break or maybe a hoist rope in the bucket would have to be fixed which would delay the work a half an hour. [426—348]

Q. Would the delay be reported to you?

A. No, I would ask why this was.

Q. Then these towers are delayed when the cable is not running? A. The towers?

Q. That is, can the bucket still continue to come up; if the cable is not running down below can the cable stop the tower?

A. No, it has no connection at all.

Q. Each tower has an independent engine?

A. Each tower has an independent engine supplied it.

Q. In connection with the splicing of this cable, Mr. Gedge, you say that one strand was taken out and another put in?

A. You take out the two ends that are wrapped on each side and you take that one strand back to a certain distance and you lay the other strands in.

Q. At the extreme ends of that splice where the ends come in to one another to finish the splice was the diameter of that cable increased?

A. No, they take out the heart of the cable, the center or core, they take those out and put those in.

Q. So the diameter is not increased, it remains the same diameter?

(Testimony of N. E. Gedge.)

A. No, of course this core is a very small fraction and it is pulled out.

Q. I understand then if the cable of the coal-conveyor is off has not been simply stopped the cars going up from the ship below and unless the hoppers are down low will have to stop?

A. They would have to stop.

Q. They have no place to put the coal?

A. Yes, if the hoppers would be full.

Mr. STANLEY.—As I understand you, you stated to Mr. Hampton the fact that the buckets were not running or anything of that kind was not reported to you?

A. No, unless there was a material difference in the discharge of the coal.

Q. If there was a material difference, from hour to hour in [427—349] the discharge of the coal, what would you do?

A. I would simply ask how is it that you drop from one hundred and fifty tons down to fifty tons, like that.

Q. And did any such thing occur on the Saturday previous to Mr. Ward's being hurt? A. No, sir.

Q. Is there any difference, Mr. Gedge, in the amount of coal—let me ask you in the light of Mr. Hampton's questions, you say that you would keep tab upon the amount of coal taken out per hour?

A. Yes.

Q. Do you mean that you would stay there from hour to hour?

A. No, I would go to the scale-house and take the

(Testimony of N. E. Gedge.)

amount of weighing.

Q. Would you go there every hour?

A. No, if I happened to be there I would go over and copy it off his list, copy it off from the records.

Q. At night when there was everything reported if there was a delay reported in unloading the vessel you would want to know why?

A. Yes, I would have to know why.

Q. How long would those buckets have to be shut down to show a material difference in the hour's run?

A. It all depends if the coal is moving fast, if it is shut down to fifteen or twenty minutes in that way it would show quite a little difference between twenty minutes and half an hour, it would depend merely on what had to be done, what happened.

Q. And when you say it is running fast then you mean it would be running all right? A. Yes.

Q. Now, under what conditions have we got the buckets running frequently, that is more frequently than others?

A. Because when we first start to work on the cargo coal comes out very rapidly; when we get down to where there is very little coal in the hatches if there is to be trimmed out underneath the hatch where the grip can get it and it will run away down to [428—350] one-third or one-quarter of what it will go when it is running fast. It is very slow when getting the last part of the coal out of the hold.

Q. When you get right down to the skin of the vessel?

A. Yes, when there is a little coal left in the back

(Testimony of N. E. Gedge.)

ends then it has—

Q. When this coal has to be chucked by hand?

A. Yes, has to be shovelled.

Q. Under the grip? A. Under the grip.

Q. Whereas when the hold is first opened and some distance down why the grip comes down and then automatically takes the coal out?

A JUROR.—As a usual thing do the cars keep the hoppers clean, that is the movement of the cars keep it empty?

A. If they are running fast they won't keep them empty; there will be coal in the hopper all the time, some coal. If it is running slow the cars are waiting.

Q. They don't get ahead of the cars?

A. When it is running very fast first working on the cargo.

Q. How long does it take to fill the car working, what rate?

Mr. STANLEY.—Mr. Ward said the grip will make a return trip, it will come down to the hold, get its load and deposit in the hopper and is back again in half a minute.

The COURT.—Half a minute to forty-five seconds.

Mr. STANLEY.—Around there, a half a minute was when it was running fast. When it was going slow down, the bucket, it was forty-five seconds, in going lower down he said about a minute.

A JUROR.—That is what Mr. Ward said; I wanted to know what Mr. Gedge thought about it.

A. Coal has come out there all the way from less

(Testimony of N. E. Gedge.)

than tons an hour up to I think two hundred and eighty tons, frequently [429—351] we have taken away two hundred tons an hour. One hundred and fifty, one hundred and sixty, one hundred and seventy, one hundred and eighty.

Q. Out of the two towers?

A. Out of the two towers.

Mr. STANLEY.—And running down as low—

A. As fifty and even a little lower if we have to wait there to have the men shovel the coal under the hopper.

Q. Do you remember on the occasion of this Saturday of the—in what condition the cargo was?

A. Yes, sir, we were finished up a couple of holds on that steamer at that time; if I am not mistaken she went away on Tuesday.

Q. As a matter of fact, Mr. Gedge, you looked that up for me, did you not?

A. Yes, we were coaling at a couple of holds.

Q. What do you mean as to the difference there is in the discharge of coal vessels and when you get right down near the end? A. Yes, sir.

Q. Near the bottom? A. Yes, sir.

Q. For instance, could you tell us how the coal was coming out per hour on the 6th of July, that is the Saturday before Mr. Ward was hurt?

A. I could if I refer to a book I keep.

Q. You cannot speak from memory? A. No.

Mr. STANLEY.—Have you any objection?

Mr. DOUTHITT.—No.

Mr. STANLEY.—Now, Mr. Gedge—do you know,

(Testimony of N. E. Gedge.)

Mr. Gedge, what the width of the ties on the coal-conveyor is? A. Yes, sir.

Q. What is it? A. Four feet.

Q. That is between the outside, the extreme width? A. The extreme width.

Q. And do you know the distance between tracks?

A. At that point is twenty inches.

Q. At what point do you mean?

A. Down there at the curve. [430—352]

Q. Indicating the curve where the eight pulleys are? A. Yes, sir.

Q. The makai and the mauka side of the eight pulleys? A. Yes, sir.

Q. Is that the gauge of the track?

A. That is the inside.

The COURT.—Q. That is the same all over the conveyor, is it not?

Mr. STANLEY.—No, your Honor.

A. No, there is something on the track, the track is a little bit wider there on the curve.

Q. At the point from where you made the turn?

A. I don't know, the inside of the track is wider but on the outside of the rail there is an extension.

Q. What is that, Mr. Gedge?

A. The inside is twenty inches.

Q. And from the outside of one rail to the outside of the other?

A. Twenty-three and one-half inches.

Q. Now, Mr. Gedge, at the time of Mr. Ward's injury can you state how—I will ask you what is the distance, Mr. Gedge, between the ties and the

(Testimony of N. E. Gedge.)

stringer supporting the various stanchions?

A. There is a steam box that goes down here.

Q. Answer my question first: What is the difference between the ties and the stringer that supports the stanchions around the conveyor on this makai end?

Mr. DOUTHITT.—Do you know, Mr. Gedge?

Mr. STANLEY.—How far, do you know?

A. Do you mean how much is it elevated?

Q. How much is the tie elevated above the stringer?

A. Ten inches, about ten inches. I thought you said out from here.

Q. From the tie down to the stringer?

A. About ten inches.

Q. And what is the size of width of the stringer, if you know? A. Ten by ten.

Q. And is there any other contrivance or was there at the [431—353] time of the accident on this coal-conveyor outside of the ties beyond what is shown on this model?

A. There is a pipe covered by a one by twelve across forming a steam box down there, I think it is a one by twelve across.

Q. That runs on the outside—on the inside of the stanchions, does it?

A. It runs right down along here.

Q. On the inner side of the stanchions?

A. Yes, sir, on the inner side of the stanchions.

The COURT.—On the stringers?

Mr. STANLEY.—On the stringers.

(Testimony of N. E. Gedge.)

A. It is up here.

Mr. DOUTHITT.—It is—

A. Between the ties and the platform, you have all seen it. It is between the ties and the platform it runs all the way down between the ties and the platform so that you step right from here onto that and step over.

Q. On which side of the stanchion is that box?

A. I am not sure whether it is on the inside, no it is there.

Mr. DOUTHITT.—There is a steam-pipe in the box, is there not?

A. Yes, a steam pipe in the box.

Mr. STANLEY.—And if you want to go from the ties, Mr. Gedge, over to that, I am speaking about the time of the accident as I understand, the platform is further in now, if you wanted at the time of the accident to go from the tie to the platform state whether or not you could do it by going through these alternate stanchions?

A. Yes, you could step right down from the tie onto this ten by ten stringer and then up onto the box and onto the platform.

Q. Mr. Gedge, are you familiar with the prices ruling or the wages ruling in Honolulu for work done by men tallying cargoes.

Objected to as incompetent, irrelevant and immaterial.

Mr. STANLEY.—We propose to show that Mr. Ward is capable of doing that kind of work. We intend to connect it with other [432—354] evi-

(Testimony of N. E. Gedge.)

dence, showing that Mr. Ward could do it.

The COURT.—As affecting the amount of damages?

Mr. STANLEY.—Yes, sir.

Objection overruled, on counsel's promise to connect it up to show that Mr. Ward could do this class of work. A. What is the question?

Mr. STANLEY.—What are the wages ruling in Honolulu for the work of tallying cargo out of vessels and into vessels? A. Four dollars per day.

Q. Well, is that the price that prevails right through Honolulu, is that the maximum or minimum, the average or what?

A. I know I have to hire men frequently to tally out sugar and I have to pay always four dollars a day, and I believe that is what is paid at the Hawaiian wharves to-day.

The COURT.—Is employment of that character frequent or infrequent in Honolulu?

A. There is a great deal of tallying work going on around about the wharves, a good deal of tally work.

Mr. STANLEY.—What is that?

A. A great deal of tally work for the American-Hawaiian and Matson Navigation Company.

Q. Now, Mr. Gedge, were you present on the occasion of the accident to Mr. Ward?

A. Beg pardon.

Q. Were you present on the occasion of the accident to Mr. Ward? A. I was not.

Q. Had you been down at the wharf prior to the

(Testimony of N. E. Gedge.)

accident? A. I had.

Q. On that morning? Yes, sir.

Q. Had you seen Mr. Ward? A. I had.

Q. Where had you seen Mr. Ward, on the wharf at the conveyor?

A. On the wharf at the conveyor pier.

The COURT.—Prior or subsequent to the accident? [433—355]

A. Prior to the accident.

Mr. STANLEY.—And about what hour was that?

A. Well, I saw him before seven o'clock, and I think I saw him a little before eight o'clock when I went to town.

Q. And where did you next see Mr. Ward?

A. At the Queen's Hospital.

Q. State whether or not you saw Mr. Ward at the hospital once or more than once?

A. I saw him twice that I am sure of, I think three times.

Q. How long was Mr. Ward in the hospital?

A. Mr. Ward was in the hospital about fifty-six days according to the bill.

Q. State whether or not you visited the hospital on other occasions when you didn't see Mr. Ward and while he was there? A. Just to make inquiry.

Q. Now, Mr. Gedge, at any time while Mr. Ward was in the hospital had you any conversation with him in reference to the accident and how it occurred?

A. I did.

Q. State who was present.

A. Mr. Ward was just sitting on the opposite side

(Testimony of N. E. Gedge.)

—was sitting on the verandah outside his room in the invalid's chair.

Q. And what was said?

A. We spoke about his health and also about the accident.

Q. Was anything said about how the accident occurred? A. Yes, we talked about it.

Q. What was said?

A. Well, we talked about the accident and I asked him why he—well, I said, George, why in hell did you ever try to put that cable back without raising the weight?

Q. And what did he say to that?

A. Well, he said he didn't know, but he thought he could save some time, I suppose I was foolish; I thought I could save some time.

Q. I thought was foolish, I thought I could save some time? [434—356]

A. I suppose I was foolish, I thought I could save some time.

Q. Now, who attended, Mr. Gedge, on behalf of the company to Mr. Ward's accommodations in the hospital? A. I did.

Q. And who paid?

A. The Inter-Island. I paid the bills.

Q. Now, what accommodations was Mr. Ward given? A. Private room, private nurses.

Q. How many nurses?

A. He had two for a short time and one all the time.

Q. And by whom were those nurses paid?

(Testimony of N. E. Gedge.)

A. Paid by the Inter-Island.

Q. And the private room was paid for?

A. The private room was paid for by the Inter-Island.

Q. State whether or not Mr. Ward had a private physician? A. He did.

Q. Who was that? A. Dr. Straub.

Q. And who paid for the services of Dr. Straub?

A. The Inter-Island.

Q. Can you state, Mr. Gedge—up to what date was Dr. Straub paid by the Inter-Island?

A. Up to March 15, 1913.

Q. You mean that was the date of Dr. Straub's last bill or the date of your payment?

A. His bill was dated the 18th; we settled with him in full up to the 15th of March.

Q. And can you tell us how much was paid to Dr. Straub?

Objected to as immaterial.

Objection sustained. Exception.

Q. You say Dr. Straub was paid up to March 15th, 1913? A. Yes, sir.

Q. Now, what moneys if any were given to Mr. Ward?

A. Regular wages were paid up to and including the 8th day of March.

Q. From the time of his accident were any moneys paid Mr. Ward after his accident?

A. Yes, he was paid regular pay [435—357] to and including the 8th day of March, 1913.

Q. At what rate? A. Five dollars per day.

(Testimony of N. E. Gedge.)

Q. Can you tell us how much in all was paid for wages? A. How much?

Q. How much in all was paid giving his wages?

A. About a thousand and fifty dollars.

Q. Do you know, Mr. Gedge, in connection with the cable that was used by the company before the accident how long—what was the greatest length of time the company could use the cable?

A. Previous to his accident?

Q. Surely.

A. The longest we used was fifteen months.

Q. State how did that cable compare in diameter, the number of strands and wires with the cable in use when Ward was hurt?

A. The same exactly.

Q. Could you say exactly whether or not that cable was in use immediately prior to the one that was in use when Ward was hurt or when was it?

A. Yes, previous to the one.

Q. Was it the one immediately previous to that one?

A. Yes, sir, immediately previous to the one.

Q. I will ask you, Mr. Gedge, what power is being used on the coal-conveyor at the present time?

A. Electric power for part and steam for other parts.

The COURT.—What?

A. Electric power for the cable and steam for the towers.

Mr. STANLEY.—And what power was used in June of last year during the occasion of the last

(Testimony of N. E. Gedge.)

trial? A. Steam.

Q. For the whole thing?

A. For running the cable, yes.

Q. I will ask you if at any time you were present when experiments were made to show what the effect of the cable at the lower makai end of the cable would be with the engines stopped and the weight—

Objected to as incompetent, irrelevant and immaterial.

Mr. STANLEY.—I want to show what effect there is on the cable on the makai end if the engine is stopped and weight is lifted [436—358] and done with a cable of exactly the same make to the cable at the time Ward was hurt and with the moving power of the cable the same.

Objection overruled. Exception. Exception allowed.

(Last question read.)

Mr. STANLEY.—The weight raised?

A. I was.

Q. At the time that that experiment was made, Mr. Ward—Mr. Gedge, how did the cable in use compare in size and weight with the cable in size in operation at the time that Mr. Ward was hurt?

A. The same size.

Q. At the time the demonstration was made, the experiment was made, what was the condition of the track and cars?

A. There are twenty cars, I don't remember how the cars were, there were cars on the track there were cars at different places.

(Testimony of N. E. Gedge.)

Q. There was cars at different places, how many cars were there?

A. There were twenty cars on the conveyor.

The COURT.—Were the grips of all the cars attached or unattached?

Mr. STANLEY.—We are coming to that, your Honor.

Q. Now, Mr. Gedge, what was done at that time?

A. The engine was stopped, the grips of the cars released and the men hoisted the box up.

Q. And when that was down what effect, if any, had those actions upon the cable at the makai end of the conveyor?

A. Standing down there the cable sagged on the ties between these rollers, that went all the way along.

Q. Where were you standing?

A. I was standing down there at the lower end.

Q. Who else was present, Mr. Gedge, when that was done?

A. I believe that you were there and Mr. Hemenway, Mr. Kennedy, Sheedy, Mr. Kopke and, I think, Mr. Young, I think Mr. J. M. Young, of the College of Hawaii [437—359]

Q. When you say the cable sagged, what do you mean by that; come up here and show us?

A. There are rollers all along the track here and the cable sagged down between these rollers to the ties.

Q. Sagged down onto the ties? A. Yes.

Q. And within what time, Mr. Gedge, after the various operations had been done, the shutting the

(Testimony of N. E. Gedge.)

engine, the lifting the weight, and releasing the grips, did this condition appear?

A. Almost immediately, you could see it commence to sag right away.

Q. And within what time was it on the ties?

A. What do you say?

Q. How long did it take before the cable sagged onto the ties?

A. Well, it was less than five minutes.

Q. State whether or not that experiment and demonstration any attempt was made to pull the cable from the mauka end one hundred and fifty, *fifty*, or any other number of feet, around until the cable sagged up at the makai end?

A. The cable was not touched at all.

The COURT.—Pardon?

A. The cable was not touched.

A JUROR.—How much of the pulleys extend above the ties, what I mean to say is how much of the pulley—

The COURT.—These dollies?

A JUROR.—Yes, how far did they extend above the ties?

A. I never took any measurements, but I should judge two inches at the highest.

Q. How much? A. I never took any measurements.

Mr. STANLEY.—How much of the dolly itself or pulley itself extends above the floor of the track?

A. I could not tell you; they set down in a socket. The pulleys set down in a socket on each side and

(Testimony of N. E. Gedge.)

they are above the floor.

Q. Do you know whether or not Mr. Gedge the socket was resting [438—360] on the ties?

A. The socket sets down in the tie, the socket sets down, down below the surface of the tie.

A. JUROR.—Do you keep a record of the times you change cables? A. No, we do not.

Q. A record of when you change drums?

A. No.

Q. Do you keep a record of the rate per hour of the coal unloaded? A. Yes.

Q. By the towers?

A. No, only the weight of coal that passes over the scale.

Q. Well, you have records when you bought new cables?

A. Yes, I always keep cables in stock. We are the agents for the Roebing cable and we sell a good deal of wire rope all over the islands.

Q. Mr. Gedge, do you remember when you changed the cable that was in use when Mr. Ward was hurt?

A. Yes, sir, I remember about when they changed, about in August, 1911. I have reason to remember that cable for this reason—

Q. When did they put in—when did they take it off after Ward was hurt?

A. After Ward's accident?

Q. Yes. A. About six day, six days I think.

Q. After the accident? A. Yes, sir.

Q. Why was it taken out at that time, Mr. Gedge, if you know?

(Testimony of N. E. Gedge.)

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Exception.

Q. What was the condition of the splice of the cable, Mr. Gedge, at the time it was taken out?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. STANLEY.—I desire to make an offer of proof to save my rights.

The COURT.—You may make your offer of proof by consent of [439—361] counsel after the jury are excused.

Cross-examination of N. E. GEDGE.

Mr. DOUTHITT.—Mr. Ward was injured on Monday, the 8th day of July, 1912, Mr. Gedge?

A. Yes.

Q. The cable was taken out on Saturday, was it not, the following Saturday?

A. Saturday afternoon.

Q. Saturday afternoon? A. Yes.

Q. Then it was in use on the Monday after he was injured? A. Yes.

Q. Was in use Tuesday, Wednesday, Thursday, Friday and Saturday it was removed?

A. Yes, sir.

Mr. STANLEY.—I object to this as irrelevant and immaterial.

Objection withdrawn.

Mr. DOUTHITT.—When was that coal-boat discharged, Mr. Gedge, the one that Mr. Ward was in-

(Testimony of N. E. Gedge.)

jured on—at the time that George Ward was injured the coal-boat that was in?

A. Finished discharging on Tuesday the following day.

Q. And there was no more coal-boats at all?

A. Yes, there was, immediately started right on another.

Q. And did you finish that other one?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Exception.

Q. How long had that cable been in use, the one that injured George Ward, the plaintiff in this case?

Objected to. Question withdrawn.

Q. How long had the cable been in use at the time that George Ward was injured?

A. About ten months.

Q. It was installed while Ward was east, was it not? A. Yes, sir. [440—362]

Q. Now, Mr. Gedge, had you ever seen a cable in or a cable installed? A. I have.

Q. How long does it take to put in a cable?

A. To take the old one out and put in a new one and finish it on a Sunday or take one out in the afternoon you can finish it the next day.

Q. Now, will you please explain to us the method by which a new cable is installed?

A. The old cable is cut at the drum on the engine or close to it where they can get space enough to splice it onto the new cable. The new cable is pulled up onto the conveyor and as it goes out onto the con-

(Testimony of N. E. Gedge.)

veyor, the old cable is taken out and taken down on the wharf until the new cable is all in its place.

Q. Then the main part of the operation, Mr. Gedge, as I understand, is the splicing of the cable, is not that a fact?

A. The main work that is required is the splicing of that cable, the old cable has to be taken out and the new one put in its place.

Q. The main thing to do when you put in a cable is to have it spliced, that is the idea, of course, and running it around the coal conveyor by being taken around by the old cable, is not that a fact?

A. It may be that is a matter of opinion.

Q. My idea of it is this, that the main thing to be done when a new cable is installed is to splice the new one to the old one because the machinery takes it up when you start it and pulls it around the pulleys, is not that so?

A. With the assistance of the men of the conveyor.

Q. Yes, I understand, but let's get right back to it again. You have seen cables installed, Mr. Gedge?

A. Yes, sir, I have.

Q. And if you want to put on a new cable you cut the old cable first, don't you? A. Yes.

Q. Then you splice the new cable to the old cable, don't [441—363] you? A. Yes, a rough one?

Q. A rough splice? A. Yes, sir.

Q. Then the engine is started, is it not?

A. Yes, sir.

Q. Then the engine carries the cable right around the pulleys right around the coal-conveyor until you

(Testimony of N. E. Gedge.)

get it all around the coal-conveyor, and then it is spliced again, is it not? A. It is.

Q. Then the particular or the main work or the difficult work to that is the splicing of the cable, is it not? A. I presume it would be.

Q. You know, don't you, Mr. Gedge?

A. Well, I guess it is a serious part of the job.

Q. I don't want your guesses, I want to know whether it is so or whether it is not. The splicing at the beginning is merely a temporary splicing?

A. Yes.

Q. To get it attached to the old cable?

A. Yes, sir.

Q. Then when you get the cable all around the pulleys, Mr. Gedge, then it is respliced, is it not?

A. Yes, then it is put together.

Q. That is the whole job?

A. Yes, I guess you would consider that the principal part.

Q. That is the principal part of putting in the cable? A. It is.

Q. It is not the drawing around of that cable that takes the time, is it? A. No.

Q. It is the splicing of the old cable to the new cable or the new to the old, what do you call it?

A. It is a splicing of the two new ends together.

Q. It is the splice?

A. It is one continuous cable put together.

Q. The old cable only cuts a figure in the matter of sufficient to tie the new cable around to place in position? A. Yes, sir. [442—364]

(Testimony of N. E. Gedge.)

Q. Now, Mr. Williamson is a splicer and rigger, is he not? A. Yes, sir.

Q. How long has he been in the employ of the Inter-Island Steam Navigation Company, Mr. Gedge? A. Oh, a good many years.

Q. Was he a rigger or splicer at the time that Ward was injured?

A. He was a rigger and splicer. He spliced all the cable, I think, every cable that went in there.

Q. And at the time, Mr. Gedge, that this cable was first put in you employed a splicer or rigger, did you not, to splice that cable?

A. He was already in our employ.

Q. Who was that? A. Mr. Williamson.

Q. Then Mr. Williamson, as I understand, was in the employ of the Inter-Island Steam Navigation Company at the time when the first cable was put in on this coal-conveyor?

A. The very first cable on the coal-conveyor.

Q. Yes.

A. Well, I could tell that by looking up the records.

Q. Give us your best recollection, Mr. Gedge?

Objected to as immaterial.

Q. Mr. Gedge, you testified that Mr. Ward superintended the installation of that cable?

A. Certainly.

Q. Then with regard to the actual installation as you have called it, Mr. Gedge, when the coal-conveyor was first started, what do you mean by installation, simply that Mr. Ward was there to see that it was done?

(Testimony of N. E. Gedge.)

A. Mr. Ward was there in charge of the conveyor. Mr. Williamson was subject to Mr. Ward's orders whenever he reported at the conveyor.

Q. Did Mr. Ward give Mr. Williamson any orders how to splice a cable?

A. I don't suppose he told him how to splice it.

Q. Was Mr. Ward a splicer of the Inter-Island Steam Navigation [443—365] Company?

A. No, sir, he was not.

Q. Don't you know as a matter of fact that Mr. Ward does not know anything about splicing the cable? A. No, I don't know it.

Q. You have never seen him splice a cable?

A. No, but I think he knew considerable about it.

Q. You think he did? A. Yes.

Q. That is only your idea?

A. That is my observation.

Q. Your observation? A. Yes, sir.

Q. But he never was employed by the Inter-Island Company for the purpose of splicing cables, that was done by a particular man, namely Mr. Williamson?

A. Yes, it was.

Q. And whenever there was a new cable installed at the coal-conveyor of the Inter-Island Steam Navigation Company, it was necessary, was it not, Mr. Gedge, to have Mr. Williamson there in order that the cable could be and would be properly spliced, in order that the cable could be put into operation?

A. He did the splicing.

Q. What is that?

A. Yes, he did the splicing.

(Testimony of N. E. Gedge.)

Q. When the new drum was installed, Mr. Gedge, that was reported to you, was it not, by Mr. Akina in writing?

A. Not in writing—after it was installed?

Q. Yes. A. Yes, he did.

Q. Then in answer to Mr. Hampton's question you said that there was no record kept of the installation of drums, when new drums were put in, didn't you?

A. We don't keep any record.

Q. Don't you require the machinist or luna in charge of the coal-conveyor to tell you what is being done there if there is any new machinery required?

A. For a short time I had Mr. Akina make reports of what was going on down there in the daytime with his eight men. We had eight men employed down there with our steamers taking coal or anybody else, I wanted to [444—366] know what the men were working on and he made a regular report for a short time there of what was going on. That was only when there were not any coal ships in.

Q. Mr. Gedge, do you mean to say that you kept absolutely no record of when cables or drums were installed on the coal-conveyor? A. No, sir.

Q. You did not? A. No, we did not.

Q. You don't know then when a new cable was put in or when a new drum was put in?

A. No, I would know about the new drum if Mr. Akina had not called my attention or if I had not been down there at the time. I would know about the cable because something would be said about the cable.

(Testimony of N. E. Gedge.)

Q. In order to put in a new cable—we will confine ourselves to the drum now; in order to put in a new drum it was necessary for Akina to telephone up to you? A. No, he didn't telephone to me.

Q. He did not? A. No.

Q. Do you mean to say, Mr. Gedge, that on the occasion when a new drum was installed that Mr. Akina did not telephone up to you and tell you that the drum was out of order?

A. No, he did not, I was at the conveyor myself and I went into the engine-house and he called my attention to it.

Q. You are absolutely positive? A. Yes.

Q. And you were up at the engine-house, not on the conveyor, that morning?

A. I was down there around at the conveyor to the coal-yard and to the Marine Railway, I generally go around in the mornings around the different places.

Q. Was it Akina's duty if the machinery was out of order, if the drum was out of order to put in a new one? A. No, it was not.

Q. Whose duty was that?

A. It was always Mr. Ward's, it would have to be done under Mr. Ward's direction. [445—367]

Q. How was it, Mr. Gedge, do you know why Akina came to you on that occasion and not to Ward?

A. Well, he could not leave his work to go up town, I was there, and I go there every day, every day.

Q. Ward was employed in the machine-shop on the corner of River and Queen streets?

A. Yes, sir.

(Testimony of N. E. Gedge.)

Q. Some quarter of a mile distant from the coal-conveyor? A. Yes, quite distant.

Q. And Akina came to you and told you about the drum? A. Spoke to me down at the conveyor.

Q. And then you went up to the machine-shops, did you? A. I did.

Q. And you got hold of Mr. Ward?

A. I got hold of Mr. Ward, and spoke to Mr. Muirhead.

Q. Well, you simply told Muirhead, I want Ward to go down there to the coal-conveyor?

A. Yes, no man is taken from any place—

Q. Without notifying the man in charge?

A. Without the permission of the man in charge there, that is the system in our office and business.

Q. You went up there simply for the purpose of notifying Muirhead that you wanted Ward down at the Inter-Island Company coal-conveyor.

A. I explained the reason why.

Q. And you explained the reason why?

A. Yes, sir.

Q. And Ward, under orders of Mr. Kennedy, had been employed while coal ships were in as the foreman of the conveyor?

A. Mr. Kennedy is the manager of the company and gave those instructions to Mr. Muirhead that that was Mr. Ward's duty.

Q. And you had authority, as secretary, as an officer of the company, did you not, Mr. Gedge, to go up there and get Ward and bring him down?

(Testimony of N. E. Gedge.)

A. Yes, I would have authority to do it through Mr. Muirhead.

Q. Was Muirhead over you or were you over him?

A. No, but [446—368] as I told you before, we did not interfere in any one of our departments, everything goes to the head of the department.

Q. Did you have authority to give Muirhead directions or orders?

A. No, Mr. Muirhead did not come directly under me.

Q. I know he does not come directly under you.

A. I would have authority to give Mr. Muirhead orders on account of stating that Mr. Kennedy has told me to do so and so and so and so, but I had not the authority to go and tell Mr. Muirhead to go and do anything.

Q. You did not?

A. No, I have not to this time.

Q. He was not an officer of the company?

A. No, he is not an officer of the company.

Q. And was not at that time?

A. No, he is the head engineer.

Q. What is that?

A. He is the superintending engineer.

Q. He is the superintending engineer?

A. Yes, sir.

Q. Over the entire works of the Inter-Island Steam Navigation Company? A. Yes, sir.

Q. And Mr. Ward was employed at the machine-shops of the Inter-Island Steam Navigation Company, and was merely a machinist, was he not?

(Testimony of N. E. Gedge.)

A. He was a machinist.

Q. He was a machinist up there. Now, you took Ward down to the Inter-Island Coal Conveyor in your machine, as I understand you, you may have done that?

A. I may have taken him in the machine.

Q. But at all events you went up to the machine-shop and he was brought down, it may have been, in an automobile? A. It may have been, yes.

Q. Now, when you got there, you say that you examined the cable, Mr. Gedge, you looked at it, did you?

A. I looked at it when I was standing there, yes. I saw the drum, the drum [447—369] was what I was looking at.

Q. But there was nothing to prevent you from seeing the cable was there? A. No, sir; there was not.

Q. Did you go upon the coal-conveyor that morning?

A. I probably did; I was up on the coal-conveyor every morning.

Q. I am calling your attention to that occasion which is on the 6th day of June, 1912.

A. Yes, sir; I must have been up there, I go up there every day when I go up there, always go up and go probably around in the coal-yard and then I go on the coal-conveyor and down on the wharf.

Q. When there are no coal ships there?

A. That don't make any difference.

Q. You walk up whether there are any coal ships or not?

(Testimony of N. E. Gedge.)

A. Yes, that would make no difference.

Q. You remember Akina particularly up on the coal-conveyor on the morning of the 6th day of June, that very day that that drum was installed, the new drum?

A. No, I am telling you that I go up there nearly every day, I go up there; I would not swear that I went up on top of that conveyor that particular morning; think I did; I generally always do.

Q. Did you observe the condition of the cable at that time?

A. Oh, just as I was going in I probably saw the cable, but I didn't notice it particularly.

Q. There was nothing wrong with the cable, was there? A. No, sir.

Q. You didn't observe any wires sticking out, did you? A. No, I did not.

Q. The cable, as far as you were concerned—as far as your observation was concerned, Mr. Gedge, the cable was apparently in good shape, in good condition? A. Yes, sir.

Q. Now, when was the next time that you came down to the coal-conveyor [448—370] after the drum was installed?

A. I presume I was down there every day.

Q. Now, you say Akina never had anything to say to you with regard to the installing of the cable?

A. No, sir; he did not.

Q. There was not one word spoken there about the cable with the exception of the tangling on the drum?

A. That was all.

(Testimony of N. E. Gedge.)

Q. And nothing was said by Akina that called your attention to the condition of the cable?

A. No, sir.

Q. And nothing was said by Ward which called attention to the condition of the cable?

A. No, sir; there was not.

Q. Not a word? A. No, sir; not a word.

Q. Every day, then, up to the 6th or 8th day of July, from the 6th day of June, you were down there on the conveyor?

A. I was presumably every day. It is my usual custom to go down in the coal-yard, on the Marine Railway and on the coal-conveyor, and back up onto the wharf.

Q. And you say all that time, Mr. Gedge, you did not observe anything wrong with the cable, the cable was running just the same as it always had, and there were no wires sticking out or anything?

A. No, sir; I never noticed anything wrong with that cable.

Q. Do you know how the cable came off the pulleys on the Saturday immediately prior to the accident?

A. No, I do not.

Q. Where were you on the morning of Saturday, the 6th day of July, 1912, with reference to the coal-conveyor? A. I was down there.

Q. Were you there all morning, Mr. Gedge?

A. No, I was not.

Q. When did you leave in that morning?

A. Oh, I would probably hang around there for a half an hour, and if I was going there first, I would

(Testimony of N. E. Gedge.)

go around the marine railway and the coal-yard; about eight o'clock I would go up to see wht they had about eight o'clock I would go up to see what they had done the first hour and go up to the office. Saturday is a busy office day with me. [449—371]

Q. And you returned about noon-time in order to check the men as they came off the ship?

A. I guess I did.

Q. Now, then, on the Saturday immediately prior to the accident, your best recollection is that you were not there during the entire morning, it being a busy day?

A. Yes, I was not there; I never stay the entire morning.

Q. And you did come down there around noon-time on that day?

A. Yes, I would be there at one o'clock, anyhow.

Mr. STANLEY.—You say you would be there at one o'clock?

A. At one o'clock, I checked the men aboard.

Mr. DOUTHITT.—And nothing was ever said to you by Ward on the Saturday immediately prior to the accident regarding the condition of the cable?

A. No, sir; there was not.

Q. And he never told you that the cable had been off on that day? A. No, he did not.

Q. He did not? A. No, sir.

Q. Who hires the men who are employed in the hold of the ship? A. I usually hire them.

Q. Who hired the men who are employed on top of the coal-conveyor?

(Testimony of N. E. Gedge.)

A. The luna down there in charge.

Q. Who was the luna? A. Akina.

Q. Who discharged the men who were employed on top of the coal-conveyor? A. He did.

Q. Akina did? A. Yes.

Q. I did not mean the regular men, I meant the men who were employed when coal ships came in, who employed those men?

A. He employed them. There was a regular coal-gang that used to go down when the steamer would come in and he would put them on, and when the steamer put off they would go.

Q. And you employed the men on the ship?

A. I picked them out on the wharf there, and took a record of them.

Q. You employed them on the wharf and took a record of [450—372] them? A. Yes, sir.

Q. And you had the power of discharge, didn't you? A. Yes, sir; if it was necessary.

Q. And you also had the power of discharging the men that were employed on top of the coal-conveyor, too, did you not?

A. No, I never did discharge them.

Q. Who did?

A. Akina was the man in charge there.

Q. He was the luna on top of that coal-conveyor?

A. Yes, he was the luna on top of that coal-conveyor.

Q. Now, Mr. Gedge, do you mean to say that if you were dissatisfied with a man's work on top of the

(Testimony of N. E. Gedge.)

coal-conveyor that you would have to go to Akina for orders?

A. No, I would not. If the coal ship was in, Mr. Ward was in full charge, and he would say who would be discharged and who would not, and in the ordinary business of the company Akina would have the handling of his own men; he was the man who knew whether the men were giving satisfaction on that conveyor or not.

Q. Well, didn't you know, too?

A. He might have told me that he had fired a man.

Q. Well, were you not there for the purpose of seeing that the agreements of the company were kept up?

A. I was watching to see that things were kept up.

Q. Indeed you were? A. Yes.

Q. And you were down there for the purpose of seeing that the agreements made by the Inter-Island Steam Navigation Company with these foreign ships was kept up and carried out?

A. Well, we relied on Mr. Ward for keeping that work going.

Q. How is that?

A. We relied entirely on Mr. Ward to keep that work going there.

Q. Didn't you testify, on direct examination, that it would be your duty to be down there and see that the agreement with the company with regard to the discharging of the coal would be kept up in as much as there would otherwise be a demurrage of three or [451—373] four hundred dollars a day?

(Testimony of N. E. Gedge.)

A. I didn't say it was my duty; I said I kept a record of the progress there to see that these things were going on smoothly.

Q. You were generally overseeing it, were you not?

A. No, I was not.

Q. You were not a tally clerk, were you?

A. No, I was not a tally clerk.

Q. You were an officer of that company?

A. Yes, but I never interfered with those men any more than I did in the machine-shop or on the steamers.

Q. But, if an agreement that your company made with the foreign ships was not being kept up, what would you have done?

A. I would have immediately reported it to Mr. Kennedy, the general manager.

Q. Do you mean to say—do you mean to say, Mr. Gedge, that in the event that the agreement of the company in regard to the discharge of coal was not kept up at that coal-conveyor, that you would go to the general manager of the company and report it to him? A. Certainly, I would.

Q. What particular work was required at the time of the overhauling of the coal-conveyor before coal ships came in?

A. To go down and just go over the conveyor and see that everything was in order.

Q. Now, you mean that Ward, if there were any repairs to be made—you mean to the machinery for example, don't you?

A. Why, it is the engine, in the tower or engine on

(Testimony of N. E. Gedge.)

the wharf or anything of that description.

Q. If the engine happened to get out of order or machinery in general happened to get out of order, Ward went down there to fix it? A. Yes, sir.

Q. How long did it take to overhaul this conveyor?

A. It didn't take them long, there was not much to overhaul, [452—374] he would just do down and glance over it and look to see that the thing was in good shape.

Q. There was nothing to glance over so far as this cable was concerned, was there?

A. The whole thing we looked to Mr. Ward for the whole business down there.

Q. Why, you had a luna on the top here, didn't you?

A. Yes, we had a Hawaiian luna, a half-Chinese luna.

Q. How is that?

A. We had a half-Chinese luna.

Q. Who is that, Akina? A. Akina.

Q. He was a pretty responsible man, was he not?

A. Pretty good boy.

Q. But he had been in your employ, in the employ of the company for a long time?

A. Yes, from my knowledge I don't think Mr. Akina is a machinist, he may be, but if he is I don't know anything about it.

Q. He is a boiler-maker, you know that, don't you? A. No, I don't.

Q. He had been in the employ of the company for a long time? A. Yes, for some time.

(Testimony of N. E. Gedge.)

Q. And his work had always been satisfactory to the company? A. As far as I know.

Q. If it had not been you would know it, wouldn't you, Mr. Gedge?

A. Yes, I only knew him when he was first up here running a tower, he was not always a luna down in that conveyor.

Q. I know he was not. He was a luna there for the last three years of his employment was he not?

A. I would not venture to say whether it was the last three years or not.

Q. He was employed there how long?

A. I don't know when he lost his position, when he gave up his position.

Q. Do you mean to say that you fired him?

A. No.

Q. He left voluntarily, didn't he?

A. He did. [453—375]

Q. And the company after he left, the company made efforts to get him back, didn't it?

Objected to. Question withdrawn.

Q. How long had he been employed on the coal-conveyor of the Inter-Island Steam Navigation Company?

Mr. STANLEY.—Do you mean prior to the accident?

Mr. DOUTHITT.—Prior to the accident.

A. About three years that I know of.

Q. About five years, was it not?

A. About three years that I know of.

Q. About three years that you know of?

(Testimony of N. E. Gedge.)

A. Yes.

Q. And how long after the accident was he employed?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. During the three years that he was employed prior to this accident how long had he been a luna?

A. I could not tell you the exact date, there was another man, a luna there for awhile, and then Akina.

Q. He was promoted, Akina, was he not?

A. He was.

Q. Who promoted him?

A. He was promoted on the suggestion of Mr. Ward.

Q. On the suggestion of Mr. Ward? A. Yes.

Q. You didn't promote him, did you?

A. No, I did not.

Q. Who promoted him?

A. Mr. Kennedy would say whether he could be promoted or not.

Q. He would say whether he would be promoted or not?

A. Yes, sir, Mr. Kennedy was the man to say.

Q. And who suggested it to Mr. Kennedy?

A. I probably suggested it to Mr. Kennedy.

Q. You suggested it? A. Yes.

Q. And as I understand you never gave any orders down there at all in regard to the conduct of this work, never gave any orders at all?

(Testimony of N. E. Gedge.)

A. Simply to tell them what was coming [454—
376] down there, to get bunker coal or what was going to take place.

Q. And if Akina made the statement that you conducted the work, or Merseberg or Akina had made the statement that you were in conduct, general conduct, of work down there, they are mistaken about that? A. They are.

Q. Yes? A. Yes.

Q. And did you ever give any orders to shift the towers? A. No, sir.

Q. Never did?

A. No, sir, that was not my work.

Q. And did you ever give any orders to hurry up the coal, was not coming up fast enough? A. No.

Q. Suppose the coal is not coming up fast enough out of the hold, what would you have done?

A. I would have gone and seen Mr. Ward and seen the reason why, probably I could have seen the reason why that there was not coal to be had.

Q. If you saw the coal was not coming up fast enough out of the hold what would you have done?

A. Me?

Q. Yes?

A. Well, if I happened to be down there and noticed it I might have gone aboard the steamer and taken a look to see the reason why.

Q. You were down there to see that the work was conducted as expeditiously as possible?

A. As possible.

Q. And if the work was not being conducted ex-

(Testimony of N. E. Gedge.)

peditionously you would see that it was?

A. Mr. Ward is the man to see to that and I would have gone and spoken to Mr. Ward if I thought things didn't look right.

Q. What would you tell Ward?

A. I would have gone and asked him the reason why.

Q. Were you under Ward or over Ward?

A. Me?

Q. Yes?

A. I was not directly over Ward.

Q. I mean directly or indirectly?

A. No, I was not.

Q. Do you mean to tell me, Mr. Gedge, that you were not over [455—377] Ward?

A. Well, I hold a higher position in the company, but Mr. Ward is sent down there by Mr. Muirhead and I would go down there also.

Q. He is sent down by Mr. Muirhead under directions from Mr. Kennedy, general manager of that company?

A. Mr. Kennedy would also tell me as I told you before to tell Mr. Ward to go down there to the coal steamer and to handle the coal plant.

Q. To handle the coal plant?

A. Yes, be in charge of the coal plant, the entire operation.

Q. Ward would do that? A. Yes.

Q. You were not over Ward or under him?

A. I was not under him certainly, I was an officer of the company.

(Testimony of N. E. Gedge.)

Q. But as far as being an officer of the company you were over him, he was simply a machinist in the employ of the machine-ship? A. Yes, sir.

Q. And while coal-boats were coming in he was employed there on the boats?

A. Yes, sir, but he knew more about that than I did, that was his business. While he had been there right straight along from the time that the conveyor was erected. I could not tell you how to run it.

Q. You saw the working operations?

A. Yes, sir.

Q. Went down there every day?

A. Yes, but I am not a mechanic.

Q. It does not take a mechanic to know when coal is coming up rapidly or not? A. No.

Q. And it does not take a mechanic to know whether the coal is being discharged as expeditiously as possible as being shown by the tally-sheet at the scale-house? A. How is that?

Q. It does not take a mechanic to know whether the coal is being discharged expeditiously or not by means of the tally-sheet, he has nothing to do with that, has he? A. Who?

Q. Mr. Ward.

A. Mr. Ward was around the scale-house [456—378] he saw and watched things himself, too.

Q. It does not require a mechanic to get up there and find out whether the coal is being discharged fast or not, does it? A. No, it does not.

Q. As a matter of fact, Mr. Gedge, Ward was employed while coal ships were in generally in the hold

(Testimony of N. E. Gedge.)

of the ship or on the ship, was he not?

A. No, he was not.

Q. What was he down there for?

A. In charge of the whole operations. We kept two lunas in each hold, two lunas to look out for the trimming of the coal.

Q. Akina was on top, did this make any difference?

A. Mr. Ward was there, the whole thing was under him, he was over everybody.

Q. Does it require a mechanic to boss a gang of men?

A. No, it does not, but he had to go aboard to see that these grips did not injure the vessel. The grips readily injure a floor or injure the hatch.

Q. Does it require a mechanic to find out whether the grips injured the floor of the vessel, wouldn't you know if you were there?

A. If I went to see it.

Q. Certainly anybody with his eyesight could see it, couldn't he? A. That is right.

Q. That is not the reason why he was employed but by reason of the fact that he would notice that the grips did not injure the floor of the vessel or skin of the vessel?

A. He would go up inside and see that these lunas were keeping these men at work. There are lunas there for that purpose and he had supervision of the whole thing.

Q. There were eight men under the direct orders of Akina, were there not, on top?

(Testimony of N. E. Gedge.)

A. Akina and Mr. Ward, if Mr. Ward would be up there, Mr. Ward would give orders independent of Akina. [457—379]

Q. If Ward was not there Akina would give his orders to his men, wouldn't he?

A. He would be supposed to if there were three of the men in a tower probably Akina would be up in a tower running an engine.

Q. He was employed running an engine, too?

A. One of the tower engines.

Q. Tower engines? A. Yes, sir.

Q. He was employed running engines in the towers? A. Yes.

Q. And was he employed, did you ever see him in the engine-room, Akina?

A. Down at the engine-room?

Q. Yes, Akina.

A. Yes, I seen them all down at the engine-room and I have seen them go up on top there.

Q. During the time when the coal boats were in, Mr. Gedge, when Mr. Ward was at the machine-shops of the Inter-Island Company in the event of any hasty repairs to be made down here they were made by Akina, were they not?

A. Yes, any rough work was done by Akina, but when anything of any importance was done in cables and engines was all done under the supervision of Mr. Ward.

Q. And Akina was there assisting him?

A. Akina and his gang would assist him also.

Q. In the meantime when Ward was at the ma-

(Testimony of N. E. Gedge.)

chine-shops of the company, in the event of any break, weights or anything of that kind getting out of order, Akina would fix it, wouldn't he?

A. He would probably have Mr. Ward do it.

Q. Well, did he do it?

A. Akina, I have never seen Akina do it.

Q. You have never seen Akina do it?

A. No, I have not.

Q. You have never seen him do a bit of mechanical work on that coal-conveyor?

A. I have seen him do odd jobs, but anything of any importance they send for Mr. Ward.

Q. Have you seen him mending cars down there, putting in strips of iron in cars?

A. Yes, but any native laborer can [458—380] put the strips of iron on the cars.

Q. Inside, the conical shaped side of the cars, you have seen him mending the cars?

A. I have seen men at it there.

Q. Doing it under Akina's supervision?

A. I have.

Q. Akina was bossing the job? A. Yes.

Q. And he was working himself?

A. Yes, that is only nailing on sheet iron.

Q. And Ward was not sent for to do that, was he?

A. No, he was not.

Q. Then, any ordinary work I am talking about for repairs or mechanical work that was required about the coal plant or conveyor Akina did it while Ward was in the machine-shop, didn't he?

A. Nothing of any importance. Putting new

(Testimony of N. E. Gedge.)

planks on the wharves and repairing cars and cleaning up the place, anything like that, putting boards on the roofs of the houses that is under the conveyor there in the coal-yard, little things like that Akina attended to that.

Q. Anything that happened to the towers that required mending, did Akina do that?

A. No, it would be done under the supervision of Mr. Ward.

Q. Done under the supervision of Mr. Ward?

A. Yes.

Q. By Akina?

A. By Mr. Ward, or he would work, himself, there and Akina help him. I repeatedly seen Mr. Ward doing work there, if I am not mistaken I saw Mr. Ward put those engines together down there.

Q. But it was the engines, anything relating to the mechanical operation of the coal-conveyor?

A. Yes.

Q. The engines?

A. Yes, the cars or anything else that had to be changed or fixed, it would be done under Mr. Ward's orders. No change would be made there unless Mr. Ward superintended it. [459—381]

Q. And wouldn't he report that to the company, that it was necessary to have that work done?

A. If there is anything like that to be done and I happened to be down there he would tell me and if not he would tell Mr. Muirhead. Muirhead is a man who passes there two or three times a day going to the Honolulu Iron Works. He would call Mr. Muir-

(Testimony of N. E. Gedge.)

head's attention to it and Mr. Muirhead would send Mr. Ward down.

Q. Who would call Muirhead's attention to that?

A. If Akina saw Mr. Muirhead and I didn't see him, he would tell Mr. Muirhead that such and such a thing is gone and he would send him.

Q. Ward was sent down there if there was anything like that to be done down there?

A. He would, *either* he was down there to do the work.

Q. Ward had no business to leave that machine-shop of the Inter-Island Steam Navigation Company and go down on that conveyor without permission, did he? A. Muirhead would send him down.

Q. But he only went down there under orders?

A. He only went down there under orders.

Q. And never could leave that machine-shop unless he could go down there under orders?

A. Unless he went down under orders or reported to Mr. Muirhead that he heard that there was something wrong down there and Muirhead would say go ahead.

Q. That would be in response to some statements that were made by those who were in charge of the coal-conveyor at the time that there was something wrong? A. Yes, it would have to.

Q. And sometimes you would report it to Mr. Muirhead?

A. Yes, sir, sometimes I would report it.

Q. Sometimes Mr. Akina would report it to you? Mr. STANLEY.—Let the witness finish.

(Testimony of N. E. Gedge.)

Mr. DOUTHITT.—Had you finished?

A. Yes, sir. [460—382]

Q. Then, Mr. Gedge, as I understand your testimony, it is that in the event that anything happened down there on that coal-conveyor in regard to the machinery that that was reported first to the head office of the company, was it?

A. Well, it might be reported to me when I am down.

Q. But if you were not there?

A. If I was not there they would probably report it to Mr. Muirhead, Mr. Muirhead was around there going to the Honolulu Iron Works, his business calls him down there to the Honolulu Iron Works all the time and he stops in there.

Q. Was it not as a matter of fact reported to you?

A. Not always, no, sir.

Q. But at times?

A. At times, anything like this drum, when Akina told me about that drum.

Q. Aside from the drum, Mr. Gedge, have you ever received complaints from the coal-conveyor directly when you were in the office and you reported it directly to Mr. Muirhead? A. No, I have not.

Q. Never have?

A. No, I would hear about things when I was down there and I would tell Mr. Muirhead that there has been spare things put in by Mr. Ward and I would know nothing about it until I would be down there and see him doing it.

Q. Then he was only sent down there by Mr.

(Testimony of N. E. Gedge.)

Muirhead, he was the only man who could send him down?

A. Mr. Muirhead was the man to send him down.

Q. Did you ever have anything to say to the men who were under the chute there, in charge of the loading of the cars? A. In what way?

Q. Bossing the men? A. No.

Q. Giving them orders? A. No, sir.

Q. You never did that? A. No, sir.

Q. You did not as a matter of fact. If the thing was not [461—383] going according to the way you thought it ought to you would go up and report it to Mr. Kennedy?

A. I don't know what you have reference to. If there was anything coming, if a steamer was being delayed or any chance for demurrage certainly I would report it to Mr. Kennedy. Any simple delay on the conveyor as putting in a new chain, anything like that, it was not necessary to report to anybody.

Q. Loading the cars?

A. No, the men loaded the cars there under the supervision of Mr. Ward and Mr. Akina.

Q. Don't you know that under the supervision of Mr. Ward, Mr. Akina was there all the time?

A. Akina might have been there under Mr. Ward, with Akina it was not necessary for him to be there all the time.

Q. I will ask you what was the employment of Ward, was he a sort of stevedore down there or mechanic?

A. Mr. Ward was superintendent. I don't know

(Testimony of N. E. Gedge.)

as you'd call it superintendent but Mr. Ward went down there in full charge of the operations of that conveyor and nobody interfered with him when he was in charge down there.

Q. And you never gave any orders to Ward at all?

A. No, I did not.

Q. Never gave any orders to the men?

A. Not on the conveyor.

Q. Or any other order?

A. When Mr. Muirhead may not have been in the machine-shop I may have said to George I need you down on the conveyor and then told Mr. Muirhead about it and then Mr. Muirhead would send him down. But I never gave him any orders on the conveyor. He was a mechanic and he understood the running of it. I am no expert although I have seen it run from time to time. I could not dictate the running of that proposition. He is an able mechanic that put it together and operated it and superintended the operation together. [462—384]

Q. Put it together, put the steel work there and mechanical work there?

A. Put the steel, put all the steel work together direct, the pulleys on the grooves, the rails, everything of that nature in connection with that, the engines and everything else put together?

Q. What is the distance, Mr. Gedge, between the outside rail on the Ewa track of the coal-conveyor and the foot path that runs along immediately outside of the Ewa side of that coal-conveyor?

A. This obstruction in the way outside of this tie

(Testimony of N. E. Gedge.)

to the platform there is the steam-box, it is about three feet, six inches to the steam-box, the steam-box is about twelve inches and there is about twelve inches to step down onto here.

Q. Is it not about six inches?

A. About five feet six.

Q. Five or six feet? A. Five or six feet, yes.

Q. Is it not more? A. No, it is not.

Q. You are sure of that?

A. Yes, sir, I am sure of it.

Q. Between five and six?

A. From the outside of it from here to here.

Q. Now, how low down is the steam-box?

A. The steam-box, there is a ten by ten going across here and the steam-box sets up, I think, a little higher than the track. I think the top of the steam-box has a little higher elevation than the track.

Q. Then a person would have to get up on the steam-box which is a distance of how many feet, how far from the rails or ties?

A. You can step right down onto here and step down onto the steam-box, you can step right down here over the whole thing and step onto the box here. There is no difficulty in getting out to here, anybody can get out here.

Q. There is a twenty-five foot drop right below there?

A. Yes, there is and there is a ten by ten timber that goes across and [463—385] supports this whole thing all the way along, spaced every ten feet

(Testimony of N. E. Gedge.)

there is ten by ten timbers.

Q. This coal-conveyor was erected according to blue-prints and plans and specifications?

A. Yes, sir, I believe it was.

Q. You don't mean to convey to this jury that George Ward laid the whole work out of his head?

A. Put it together, he directed it.

Q. And John Ouderkirk did the carpenter work, the structural work of the coal-conveyor?

A. He did.

Q. Not personally?

A. No, under his direction.

Q. Ward simply directed the steel construction of the coal-conveyor pursuant to the blue-prints?

A. Yes, sir.

Q. According to the blue-prints? A. Yes, sir.

Q. This cable as it runs over the pulleys in response to one of the questions of one of the jurors, I think it was Mr. Medeiros who asked that question—these pulleys, the dollies we will call them, are about two and a half inches above the ties, are they not?

A. I would not be positive of that; I know that there is a portion that sets down into the ties, how much lower than the top of it this shaft sets I could not tell you unless I measured it. I never had occasion to do it, but I know that that is lower than the woodwork.

Q. About two and or two and a half inches?

A. It may be two or two and a half inches; I would not say.

A. JUROR.—Mr. Gedge, do you know how far

(Testimony of N. E. Gedge.)

apart they are? A. I would not say how far apart.

Q. About how far, Mr. Gedge? The blue-prints should show.

A. I would not undertake to say; it may be thirty feet or forty feet; I would not undertake to say.

Q. About fifty feet, is it not?

A. No, not as much as fifty feet.

Mr. DOUTHITT.—Your recollection of it then, Mr. Gedge, is that [464—386] it is how many feet between pulleys?

A. I should say it is somewhere around thirty feet. I could not tell you, Mr. Douthitt, I did not measure it.

A JUROR.—In the daily report received from Akina of the eight men, of his labor, during the time he reported a drum being placed in?

A. That is so many men working on the drum?

Q. So many men working on the drum?

A. Yes.

Q. But he did not report the cable being off?

A. No, sir, he did not.

Mr. DOUTHITT.—Now, Mr. Gedge, you know from your own personal observation down there, do not, that when the engine is stopped that there is naturally a certain amount of sag between the dollies, we will call them; that is that the cable—

A. No, I do not; I have not noticed it.

Q. What is that? A. I have not noticed it.

Q. Do you mean to say, Mr. Gedge, that you have not noticed that when you stopped the engine that between the dollies and the center of these tracks

(Testimony of N. E. Gedge.)

that cable passes over, that when you stop the engine that there is not a certain amount of sag in the cable itself between the dollies?

A. I don't say that there is not any, I say that I have not noticed any.

Q. You have not noticed any?

A. No, I never noticed any sag there at all.

Q. You say that you have not noticed that there is a sag, a natural sag in the cable, as it goes around the pulleys when the engine is stopped?

A. No, I have not taken any particular notice as to that.

The COURT.—Around the pulleys or over the dollies?

(Last question read.)

Mr. DOUTHITT.—I mean the dollies; is there not a natural sag in the cable between the dollies in the center of the track or rollers over which the cable is passed when the engine is [465—387] stopped?

A. There may be a slight sag there, I don't remember particularly.

Q. Irrespective of the slack of whether you raised the weight or you didn't; is it not a fact?

A. No, I cannot say that it is a fact.

Q. Then you are not prepared to state that it is not a fact?

A. No, I cannot; I am not prepared to say that it is not a fact.

Q. You don't know?

A. No, the only thing is experimenting—

Q. What is that?

(Testimony of N. E. Gedge.)

A. I say I noticed it when we were experimenting down there before and after the last trial; we particularly went down there to watch it, but—

Q. But you had never—

A. But I had not particularly noticed the sag there.

Q. Your experiments then, Mr. Gedge, were conducted by lifting the weight?

A. Yes, stopping the engine.

Q. Lifting the weight?

A. Releasing the grips and raising the weight.

Q. But you did not make any experiments with the cable by allowing the cable to remain just as it was, did you?

A. Well, I—no, I did not make any experiments that way.

Q. And there were no experiments made in your presence, were there?

A. I saw these experiments with the raising of the box, the like of that.

Q. Yes, but I am asking you whether any experiments were made by you or in your presence or by any one while you were there where the weight was allowed to remain in its normal natural state?

A. No.

Q. Then you are not prepared to state, Mr. Gedge, as to whether the same condition would not occur if the weight were not raised; that is, the sag between the dollies? [466—388]

A. It could not be anything like what it was when the weight is raised. The weight when raised brings

(Testimony of N. E. Gedge.)

a sag that you can see very easily.

Q. How can you say that; you say no such experiments were made?

A. For the reason with the raising of the weight I just told you that we made—

Q. I understood you that you did not make experiments when the weight was not raised?

A. No, but I have seen the cable there. Only here just the other day the cable down there I noticed when the cars were stopped *to* cable did not even touch the top of these rollers or dollies as you call them on the track there, was tight enough to be a quarter of an inch or half an inch over the dollies on the lower end when the cable was not running.

Q. How did you stop the engine?

A. I did not stop it; the man on the conveyor stopped it.

Q. Was not that conducted—when were these experiments made?

A. The first experiments were made before and after the last trial.

Q. When were the last experiments made?

A. I have not seen any experiments made except here the other day and with a car going—with a cable coming off the track, off the dollies.

Q. Experiments to see that—

A. I was trying those experiments, something that I had seen occur down there,—that I had personally seen happen and I wanted to know how it occurred, whether it occurred just as I remembered it had occurred that time, that is the thing that I went down there about.

(Testimony of N. E. Gedge.)

Q. Then there were not experiments as I understand you made by any one in your presence since the last trial of this case? A. No.

Q. Those experiments were made over a year and a half ago then?

A. Before and after that last trial, as I told you [467—389] before.

Q. Before and after? A. Yes.

Q. About when?

A. I cannot tell you just off-hand.

Q. About how many months after?

A. Well, it was not very long.

Q. Was it a month?

A. I cannot remember the date. Maybe Judge Stanley can tell you because he was there. I cannot remember.

Q. You don't know how that engine was shut off, do you, whether the power was shut off?

A. Shut off from a little round wheel just outside the scale-house, within a few feet of the scale-house, there is a wheel there; a fellow turns that and the things shut off.

Q. Just show us how he did that; did he do that in your presence, Mr. Gedge?

A. I have seen it done there repeatedly,

Q. How did he do it?

A. Why, just simply stooped over and turned the wheel.

Q. Slowly?

A. No, he turned the wheel pretty fast.

Q. He did not go over and shut it off with a jerk,

(Testimony of N. E. Gedge.)

did he? A. No.

Q. He did not? A. No.

Q. He simply turned it off like that?

A. I simply know he went and turned it off, Mr. Douthitt; I don't know how fast he shut it off.

Q. You don't know whether there was any steam left in the engine or whether all the steam was shut off?

A. No, sir; because I am not a mechanic and how should I know anything like that, whether there should be steam.

Q. You are not prepared to state that at the time that that engine was shut off, at the time that you made your experiment, was the same manner in which it was shut off on the Saturday prior to this accident?

A. Shut off as it was always shut off [468—390] under similar conditions exactly.

Q. You never saw it shut off on Saturday?

A. I seen it along in off days.

Q. Did you see it shut off on Saturday prior to the accident? A. No, I was not down there.

Q. You do not know whether there was any steam left or not or whether it was shut off slowly or quickly, violently?

A. I could not tell whether he shut it off violently.

Q. When? After the cable was off the pulleys?

A. No, I never saw it shut off violently. I cannot describe to you how fast the man turns that wheel.

Q. You saw him turn it?

(Testimony of N. E. Gedge.)

A. His back may be between you and the wheel; you cannot see through him. He would go over there from his work on the conveyor; I may be behind him. He is standing there in front of me; naturally it is the boy at the scale-house changing the ropes; he would be in the way; I couldn't possibly see the wheel; I could not tell, he might shut it off violently, he might not shut it off violently.

Q. You don't know that by the operation of shutting off steam suddenly and quickly that it has a tendency to throw the cable around?

A. No I do not know that.

Q. And do you know, Mr. Gedge, that by having steam remaining in the engine that you could also have the strain remaining on any cable there will be certain strain?

Objected to.

Objection sustained.

Q. The experiments with regard to the cars going around the track Mr. Gedge, how many cars were sent around? A. At one time two, one time three.

Q. Right close together?

A. Right close together.

Q. Did the cable—the cars get around all right?

A. No, the cable jumped out of the slot of the first car.

Q. How is that?

A. The cable jumped out of the slot of [469—391] the first car.

Q. How is that?

A. The chute, the long chute whatever it is that

(Testimony of N. E. Gedge.)

the cable lays on. The car was standing down there at the lower part that chute is all open and all the cars standing on the track and if a car comes along gripping the cable it forces the other cars on the curve, and that is the condition in which I saw it.

Q. And then were there two empty cars and two coal-loaded cars? A. Empty cars.

Q. Two empties in front? A. Yes, sir.

Q. One loaded behind?

A. No, empty behind, all empty cars.

Q. That was the experiment, you are sure about that?

A. That is the experiment I made down there.

The further hearing of this case was continued until Monday morning at 8:30 o'clock, June 8th, 1914.

[470—392]

385.

GEORGE E. WARD

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

VOL. II. [471—392a]

No. 817. Received and filed in the Supreme Court, December 24, 1914, at 3:15 P. M. Robert Parker, Jr., Assistant Clerk.

CIRCUIT COURT

DEC. 24, 1914.

FIRST JUD. CIRCUIT. [472—392b]

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[474—392d]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

(Testimony of N. E. Gedge.)

June 8th, 1914.

Cross-examination of N. E. GEDGE resumed.

Mr. DOUTHITT.—Then as I understand you, Mr. Gedge, that the only orders that you ever gave to Ward was when he was required there at the coal-conveyor that you sent up to Mr. Muirhead to tell him that you wanted Ward down there?

A. I would probably go over there and tell Mr. Muirhead that Ward was required.

Q. And if you didn't go over and tell him yourself you would send word to Mr. Muirhead to excuse Ward? A. I would see him at the office.

Q. How is that?

A. Mr. Muirhead drops into the office quite often, and I would see him there; most likely I would go to the shop and see Mr. Muirhead.

Q. You would see Mr. Muirhead? A. Yes, sir.

Q. And tell him that you wanted Ward down at the coal-conveyor or wherever you wanted him; that was the general method of [475—393] doing things?

A. That was the general—that was the instruction from Mr. Muirhead.

Q. And you followed out that instruction, Mr. Gedge? A. I followed out that instruction.

Q. I will ask you if this is your writing, Mr. Gedge? A. Yes, sir.

Q. That is your writing?

A. Yes, my handwriting, yes.

Mr. DOUTHITT.—I desire to offer this in evidence, if your honor please.

(Testimony of N. E. Gedge.)

Mr. STANLEY.—No objection.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "F."

Mr. DOUTHITT.—"November 24th, '11. George: When you have the time I wish you would come aboard the 'Dix' to see how she is for discharging at our conveyor, will go with you. Gedge." Any other of those orders, Mr. Gedge?

A. Probably there are others. I don't consider that an order. If I cannot find Mr. Muirhead I would leave a note or send a boy over with a note there. If I didn't see Muirhead I would tell George in the shop myself if I didn't see Mr. Muirhead, that was a common thing, but I didn't issue a written order. I did not consider that a written order. I told him I wished him to come down and take a look at her. And there are times when Mr. Muirhead would be away on the other islands.

Q. And that was a common thing then for you to send notes to Ward?

A. No, not a common thing, occasionally, if I didn't happen to see Mr. Ward I would send a note over to Mr. Muirhead.

Q. You have sent over to Ward, have you not?

A. Yes, I sent notes to Mr. Muirhead.

Q. And you have sent others over to Ward, have you not? A. I possibly have a few.

Q. A good many of them, have you not?

A. I would not send [476—394] them over orders they are not orders, but I would send him notices of steamers leaving with cargoes of coal.

(Testimony of N. E. Gedge.)

Q. Write to Mr. Ward?

A. Write to Mr. Ward and Mr. Muirhead at the same time. Ward, whenever he would meet me he would ask me when is the next coal ship coming in, but I never gave him direct orders to do anything.

Q. That is a direct order, is it not?

A. No, I do not consider that a direct order.

Q. Now, Mr. Gedge, do you remember when the— do you remember the name of the vessel which was being discharged at the time that Ward was hurt?

A. I believe I do.

Q. What was the name? A. "Guernsey."

Q. The "Guernsey"? A. Yes, sir.

Q. She had made several trips here, had she not, prior to the time when Ward was hurt, this was her third trip, was it not?

A. She had been here before, I could not say just how often.

Q. Did you ever give Ward any orders with respect to the coal on board the "Guernsey"?

A. Not from her.

Q. You say that the agreement of the company was made with these coal ships to discharge them?

A. It is with the people we purchased the coal from,

Q. And your company guaranteed to discharge five hundred tons a day, didn't it? A. Yes, sir.

Q. Now, don't you remember upon the first trip of the "Guernsey" that you had an argument with the captain of the "Guernsey" with regard to discharging the coal? A. No, sir.

(Testimony of N. E. Gedge.)

Q. What? A. No, sir.

Q. Now, let me refresh your recollection, Mr. Gedge, the company was receiving wharfage in addition to their agreement, were they not?

A. Yes, sir.

Q. For every day?

A. Yes, sir, that is part of the agreement. [477—395]

Q. Wait until the question is finished before you answer? A. Yes, sir.

Q. The company agreed to discharge five hundred tons per day and also wharfage? A. Wharfage—

Question objected to as unintelligible. Question withdrawn.

Q. The company was to receive wharfage from the ship or the ship owners of the foreign ships all the time that a vessel was lying at the Inter-Island wharf, was it not? A. Yes, sir.

Q. Don't you remember having a conversation with the captain of the "Guernsey," when the captain asked—when you told the captain, rather, that if their wharfage was paid that the vessel would be discharged as quickly as possible, that is the full wharfage at five hundred tons a day?

Objected to as unintelligible.

Q. The full wharfage taking into consideration that five hundred tons a day was discharged pursuant to agreement; that the captain wanted only to pay for the actual days that the vessel was at the wharf and not wharfage when she was done, for example, the vessel weighed five thousand tons and five

(Testimony of N. E. Gedge.)

hundred tons a day discharging that would mean ten days wharfage?

A. It all depends on whether the captain had the handling of the vessel or whether it was done through the people who purchased the coal. It may be that the coal was sold here in Honolulu and her arrangement would be directly with the people who purchased the coal, the captain would have the say whether the ship would pay the wharfage or not in a case of that kind.

Q. I am asking you about the "Guernsey"?

A. I could not tell you that unless I go and look up back correspondence to see whether she was a time chartered vessel or coming here for the trip only.

Q. Didn't you tell the captain at that time during your discussion with him as to how long it would take to discharge the [478—396] "Guernsey" of her cargo of coal that if full wharfage was paid having regard to the tonnage of the ship and with regard to your agreement of five hundred tons per day that you would get it out as soon as possible.

Objected to as unintelligible.

Q. Do you understand the question?

A. I don't remember any such conversation.

Q. And do you remember that when the captain said that he would only pay for the actual wharfage while the vessel was at the wharf you told Ward at that time to go ahead and only take out five hundred tons a day? A. No, sir, I did not.

Q. You don't remember that?

A. No, sir, I do not.

(Testimony of N. E. Gedge.)

Q. Don't you remember that happened with regard to the Japanese vessels that were in that they were advised to pay the full wharfage, when Japanese vessels loaded with coal were being discharged that the same situation arose?

A. That arrangement would be made with the people from whom we purchased the coal.

Q. How is that?

A. That arrangement would be made with the people from whom we purchased the coal.

Q. Yes, but your arrangements with all of those companies were that you were only to take out five hundred tons a day? A. No, sir.

Q. I asked you a few moments ago if that arrangement was not made with the "Guernsey"?

A. Not only to take out five hundred tons a day.

Mr. STANLEY.—The evidence is to take out a minimum of five hundred tons a day.

Mr. DOUTHITT.—You guaranteed, then, in your contract with these different companies to take out a minimum of five hundred tons a day?

A. We had to take out an average of five hundred tons a day.

Q. And, for example, a vessel containing five thousand tons [479—397] of coal you could take if you would wish according to your contract ten days to discharge that vessel of coal, could you not?

A. Yes, we could if we felt like doing it, the work would have gone along slowly.

Q. Now, that being the case, Mr. Gedge, didn't you tell Ward at the time when the captain refused to

(Testimony of N. E. Gedge.)

pay other than actual wharfage, that if the time when the vessel was actually at the wharf, when the captain refused to pay, that when he wanted to pay only the actual wharfage you told Ward to take out five hundred tons a day and you walked away?

A. I told Ward that?

Q. Yes.

A. No, sir, I don't remember that.

Q. And don't you remember, Mr. Gedge, that the captain afterwards came up to the office to find out about it and it was subsequently arranged that he was to pay full wharfage?

A. I don't think it could have happened with the "Guernsey," because I think she came here under time charter.

Q. Was it with any other vessels except the "Guernsey"? A. No, I don't think so.

Q. Calling your attention again to refresh your recollection with regard to the "Guernsey," did the captain of the "Guernsey" not come up to the office and afterwards upon agreement to pay the full wharfage the vessel was got out at a rate of over a thousand tons a day?

A. No, sir, I don't think she was discharged at the rate of a thousand tons a day.

Q. She was not discharged at the rate of a thousand tons a day?

A. No, sir, I don't think so, she had less than five thousand tons.

Mr. STANLEY.—You are referring to the first trip of the "Guernsey," are you, Mr. Douthitt?

(Testimony of N. E. Gedge.)

Mr. DOUTHITT.—Yes.

Q. Do you not know that on the morning of July 8th, 1912, the "Guernsey" took out—there was six hundred and eighty-two [480—398] tons and fourteen hundred and sixty pounds taken out of the "Guernsey" from seven o'clock in the morning up to twelve o'clock noon of the 8th day of July?

A. I don't know that, I could tell by reference.

Q. Have you any reference? A. I think I have.

Q. Bring them, produce it?

A. What date was that?

Q. July 8th.

A. Took out six hundred and eighty tons up to twelve o'clock noon.

Q. And fourteen hundred and sixty pounds?

A. Fourteen hundred and sixty pounds.

Q. And you took out in the afternoon of July 8th, 1912, how many tons?

A. Three hundred and sixty-five tons.

Q. And how many pounds?

A. Seventeen hundred and fifty pounds.

Q. How much did you take out on a Saturday immediately prior to that?

A. Five hundred and thirty-seven tons.

A. In the morning? A. The whole day.

Q. How many pounds?

A. Nine hundred and twenty pounds.

Q. Five hundred and thirty-seven pounds on the Saturday?

A. We were short of an all there, that was Saturday only up to four o'clock.

(Testimony of N. E. Gedge.)

The COURT.—That was five hundred and thirty-seven tons?

A. Five hundred and thirty-seven tons.

Mr. DOUTHITT.—And five hundred and seventeen pounds, is that right?

A. Nine hundred and twenty pounds. Five hundred and thirty-seven tons and nine hundred and twenty pounds.

Q. Then on the morning of the 8th day of July—on the 8th day of July, 1912, you took out over a thousand tons? A. Yes, sir.

Q. Then you did take out over a thousand tons?

A. Not an average. We have taken out eighteen hundred tons in a day, that is not an average. [481—399]

Q. What day was that?

A. That we took out eighteen hundred tons?

A. Yes.

A. On June 28th we took out eighteen hundred tons.

Q. June 28th, 1912?

A. Yes, sir. We have often taken out fourteen hundred and thirteen hundred tons on a day.

Mr. COKE.—What was the total tonnage on that day, June 28th?

A. Eighteen hundred tons, twenty-one hundred and thirty pounds.

Q. Twenty-one hundred and thirty-two pounds?

A. Two thousand one hundred and thirty pounds.

Mr. STANLEY.—Is that figured in long tons, Mr. Gedge, or short tons? A. In long tons.

(Testimony of N. E. Gedge.)

Mr. DOUTHITT.—Twenty-four hundred pounds to the ton? A. Twenty-two hundred and forty.

Q. The "Guernsey" had a capacity of how many tons, how many tons did she have?

A. She had four thousand nine hundred and five tons, one hundred and thirty pounds.

Q. Then she was finished on what day?

A. On the ninth, six o'clock at night.

Q. Six o'clock at night? A. Yes, sir.

Q. What time did you start in on the Saturday?

A. On Saturday morning?

Q. Yes.

A. We started in at seven o'clock.

Q. Was that the first day that she was being discharged?

A. No, she started to discharge at seven o'clock on July 3d, and finished up the night of the 9th at six o'clock P. M.

Q. Started to discharge on July 3d, the "Guernsey"? A. Yes, sir.

Q. And how many tons were taken out on July 3d?

Objected to as incompetent, irrelevant and immaterial and having no bearing on the issues of the case. [482—400]

Mr. DOUTHITT.—How many days did it take to discharge the "Guernsey"?

Same objection.

Mr. DOUTHITT.—I want to show that they got through with this work as quickly as possible because of the agreement with the company that they were to receive wharfage per day ship discharging at th

(Testimony of N. E. Gedge.)

rate of five hundred tons per day.

Objection sustained.

Mr. DOUTHITT.—Mr. Gedge, where is the report or did you call it a report that was sent in by Akina on the 6th day of June, 1912, when the new drum was installed?

A. I think Judge Stanley has it.

Q. Will you kindly produce that please? That is the report, is it not? A. That is it.

Mr. DOUTHITT.—I notice Mr. Gedge, daily report, coal-conveyor? A. Yes, sir.

Q. Was Akina the foreman of the coal-conveyor or the luna employed on the coal-conveyor required to make daily reports to the company?

A. Only for a time they are just so that we would get our ideas what all these men were doing. We had eight men down there, day in and day out. Sometimes they would be coaling our own steamers bunkers, other times they would be times that the time was not going to tell and we just wanted to get kind of what was going on down there, that was not for a very great while that was kept up.

Q. You have other reports here, have you not?

A. Yes, sir, I gave Judge Stanley a bunch of them, everything we could pick up.

Q. Have you any other records showing when the cable immediately prior to the cable by which Ward was hurt was installed?

A. He never included that in his reports.

Q. Who didn't? A. Akina didn't.

Q. Or anybody else connected with the company?

(Testimony of N. E. Gedge.)

A. No, [483—401] there is nothing mentioned in his reports about the cable at all. There was one installed there, there is reports of the days there, but it does not show any record in connection with the cable.

Q. Any record in connection with the cable?

A. No, sir.

Q. Did you get a report from anybody in connection with the cable?

A. I saw the cables put in myself.

Q. Well, did you get a report from the men from Akina as to the men who were employed upon the installation of the cable prior to the one that George Ward was hurt on?

A. They would have the regular gangs working there.

Q. The regular gang?

A. The regular gang would be working there.

Q. And that gang was composed of how many men? A. About eight men.

Q. Employed down there at the coal-conveyor all the time? A. Yes, sir.

Q. Irrespective of whether coal ships were in or out. A. Yes, sir.

Q. And there was no report, as I understand you, from any one regarding the date of the installation of the cable prior to the time that Ward was hurt?

A. No, sir.

Q. And you have no data, data at the present time, as to when the cable by which Ward was hurt, when that was installed?

(Testimony of N. E. Gedge.)

Mr. STANLEY.—That is objected to, there is no evidence that Ward was hurt by the cable.

Mr. DOUTHITT.—I am referring to the cable which was in operation on the 8th day of July, 1912, when I speak about the cable by which Ward was hurt, we will simply eliminate that. I am simply referring to the cable which was in use and operation on the coal-conveyor on the 8th day of July, 1912, when was that cable installed?

A. About August in 1911. [484—402]

Q. August what?

A. I cannot tell you the date off-hand the reason, if you allow me to explain why I know about these cables is from the fact that the previous cable to that was put on—

Q. Just a minute. I will get your best recollection, then later on explain?

A. That cable was put in in August, 1911.

Q. That was while Ward was east?

A. While Ward was east.

Q. Now, give your explanation?

A. I was going to say that the cable previous to that Mr. Ward put on the drum in a different manner than any other cable that had been put in. We had always had trouble with the end of the splice because of one of the ends coming out which would sometimes only allow the cable to be in there only two or three months and the cable would come out because the tuck would be coming out continually and delay the work. Mr. Ward put on the drum in a different manner and that cable stayed in longer than any other cable.

(Testimony of N. E. Gedge.)

Q. Did Ward ever tell you—Did Ward ever mention to you prior to that time, on any occasion that the cable was put right on the drum?

A. No, sir, we knew there was something wrong and we could not find out and Mr. Ward, himself, was the man, I believe, that found out that it was on the drum wrong and he changed it himself.

Q. Is it not a matter of fact that he told you that cable was not right on the drum on a number of occasions, and you would not allow him to change it, and finally he tried it on and it ran all right?

A. No, sir.

Q. Is it not so? A. No, sir.

Q. He is the man who was employed there?

A. Yes, sir, and he installed the cable himself.

Q. Installed it according to the plans and specifications, didn't he?

A. That I don't know. [485—403]

Q. How is that?

A. I don't know. He put the cable on. He is the man that always installed the cable, and I know at that time we all had reason to know that he changed it at that time because he watched that cable because he changed it and it stopped twisting on the rope. The rope used to twist before.

Q. Was there not a considerable amount of talk going on down there as to how that cable should be run and Ward suggested the manner in which it should be put on, and his suggestions were not received, and finally when he did put it on it ran?

A. No, sir, he always had a free hand.

(Testimony of N. E. Gedge.)

Q. Always had a free hand? A. Yes, sir.

Q. How long was that cable in use, the one immediately prior to the 8th day of July cable, how long had that been in use? A. About fifteen months.

Q. When was it installed?

A. Somewhere about May of 1910.

Q. Did you keep any data or any record of that?

A. Not any particular record of it.

Q. Was that the first cable that worked all right?

A. That was the first cable that was ever successful on that conveyor.

Q. The one that was successful on the conveyor?

A. Yes, sir, that the splices did not keep coming out, coming out.

Q. How many before that were unsuccessful?

A. There were several, I could not tell you how many.

Q. You then referred to that which was installed in May, 1910?

A. Installed somewhere about May, 1910.

Q. You are speaking simply from memory now?

A. Well, I am speaking from memory and knowing because I had occasion about that time to write to the Roebling people of San Francisco about the trouble we were having with the splices all the time and told [486—404] them that the cable would be apparently in perfect condition and the end of the splices would come out, the splice would not hold, the strand or something would come out, and they sent down a sample splice and the sample splice we have still after that cable was installed.

(Testimony of N. E. Gedge.)

Q. It was not up to Mr. Ward to replace that cable?

A. No, Mr. Ward was the man who directed, and Mr. Williamson was the man who did the work.

Q. Do you mean to tell me, Mr. Gedge, that Mr. Ward who was not a cable man, a splicer, directed the man who was a splicer for that purpose?

Mr. Ward would tell me that the cable had to be spliced, something like, and I would send for Mr. Williamson to go down and Williamson would splice it under Mr. Ward's direction.

Q. And Mr. Williamson was the splicer and rigger? A. Yes, sir.

Q. On the day that Ward was hurt, and was in the employ of the company at that time, was he not?

A. He was.

Q. And was in the employ of the company for several years before that?

A. I don't know how long.

Q. You don't know how long, but at all events it was more than a year or two years? A. Yes.

Q. And at any time that a new cable was to be installed it was Williamson who came down to do the splicing? A. Not always.

Q. But another man who understood that business?

A. There are other men in town who did work for us.

Q. Besides Williamson? A. Yes, sir.

Q. And they were splicers and riggers, they understood that work, didn't they, Mr. Gedge?

(Testimony of N. E. Gedge.)

A. Yes, sir.

Q. And that is what they were employed for, was it not, because [487—405] they did understand that work?

A. That is right, simply to do the splicing, that is the actual work of splicing.

Q. That is the main part; that is the whole thing, is it not?

Objected to; objection sustained.

Q. Now, you say that Ward was there, as I understand, superintending the installation of the cable?

A. He was there in charge of the coal-conveyor.

Q. What was he doing, what work had to be superintended by Ward when a cable was installed, if you had a splicer there, a professional splicer there, and a rigger? A. He had charge.

Objected to as already asked and answered.

Objection overruled. Exception.

A. Mr. Ward would have charge of the men and get everything in place for the splicer and assist in different ways.

Q. Get what in place for the splicer?

A. Have the cable brought up into place and whatever things were required and assist him in ordering the men here and there; there was always three or four men helping on the cable at one time.

Q. Mr. Ward did not pull the cable up there himself, did he?

A. No, but he ordered the men to do it; he was the superintendent in charge, or foreman in charge.

Q. To have everything taut, to have the cable

(Testimony of N. E. Gedge.)

brought up and put in place. All that Ward did was to order the men to take the cable that was wound around that drum or spool and have it put where it could be in position so that it could be attached to the old cable, is not that all?

A. Yes, and there would be more or less work winding the ends or strands and all that business, whatever work there was to be done there. Mr. Williamson put it together.

Q. Ward would have the cable rolled to the place and superintend the men taking it to the place where it was required so that [488—406] it could be attached to the old cable, didn't he? A. Yes, sir.

Q. And Williamson superintended the balance of it, didn't he?

A. Whenever the cable was to be spliced, Mr. Ward would be there.

Q. I know, Mr. Gedge, but after Ward had finished rolling the cable up to the position, who took charge there?

A. Well, Mr. Ward was in charge of the whole business; Mr. Williamson did the actual work of splicing under Mr. Ward, who would be in charge of all the assistants and everything else that was going on there.

Q. Do you mean to tell me that Ward gave any orders to Williamson as to how it was to be placed?

A. No.

Q. No, of course, not. Then all that Ward did was to boss the gang of men down there?

A. Yes, he had charge down there.

(Testimony of N. E. Gedge.)

Q. Akina was there, too, was he not?

A. Akina would probably be there and he might not be there. The chances are that he would be there.

Q. And you would be there, too, would you?

A. I would go there in the course of the day.

Q. When was that cable, that fifteen months cable taken out?

A. That was taken out shortly before the return of Mr. Ward from the east somewhere, in the month of August, I believe.

Q. The month of August? A. Yes.

Q. Now, you talked about some experiments that were made after the last trial, after or before the last trial of this case?

A. Well, there were several experiments made down there. There were experiments made before the last trial, during the last trial, and after the last trial, and I forgot to say in answer to your question the other day that even on last Thursday there was an experiment made down there.

Q. Yes, but I am asking you about the experiments that were made before or were made in your presence?

A. Yes, that was before and during the last trial.
[489—407]

Q. Before and during the last trial?

A. Yes, sir.

Q. That was when steam power was being used?

A. Yes, sir.

Q. Now, what experiments were there?

A. Well, the cars were in motion, the engine was

(Testimony of N. E. Gedge.)

stopped, the grips on the cars were released and the weight was hoisted.

Q. Yes, how many cars were on the track?

A. Oh, quite a number were on the track.

Q. Do you remember how many?

A. No, but there may have been one or two in the shed under repair. There was quite a number. We have twenty cars there; I don't remember the exact number that were attached on, on the main track; a few might not have been attached on.

Q. Were the cars loaded or empty?

A. Some loaded, some empty.

Q. How many loaded?

A. I cannot tell you at this time.

Q. How many empty?

A. I don't know; I know they had some loaded and some empty.

Q. And you don't know the position of those cars around the track?

A. Well, they were pretty well spread out, some around here, and some over around here. I cannot tell you from memory now. I only know that I was there when experiments were made.

Q. Now, you stopped the engine? A. Yes, sir.

Q. And the grips were removed from these cars, the position of which you are unable to tell us?

A. We sent men around and the grips were removed.

Q. The grips were removed from the cable?

A. Yes, sir.

Q. The position of the cars you are unable to tell

(Testimony of N. E. Gedge.)

us at the present time? A. Yes, sir.

Q. And unable also to tell us how many cars were loaded and how many unloaded? [490—408]

Objected to.

Q. What did you find?

A. We found that the cable would slack on the ties, would sag on the ties, between these rollers that it run along on between the ties.

Q. What is that?

A. Between the rollers or dollies, as you call them.

Q. That is all that you did observe?

A. Yes, sir; I think that is all that I observed at that particular time.

A JUROR.—The cable would sag after the weight was lifted?

A. After the weight was lifted it would sag, you would see it.

Mr. DOUTHITT.—Was the cable touching the rollers when you took it out of the grip, where they released the grips?

A. I think down below here the cable would—where the car was close up to the roller the cable did not touch, where the car was close up the grip held the cable about the rollers quite a distance off, I think it touched the top of the rollers—

Q. The cable touched the top of the rollers?

A. Along behind the cars.

Q. And you ascertained, as I understand you, from that experiment, Mr. Gedge, that when you lifted the weight you found the cable sagged between the

(Testimony of N. E. Gedge.)

rollers? A. Yes, sir.

Q. And what was the other experiment that you made?

A. Well, another time I just experimented with a car coming off the track at the curve,—not the car, but the cable coming off the track at the curve.

Q. Did you see the cable coming off the track from the pulleys?

A. On one occasion. On one occasion, a long time ago, I was standing down at this lower end when the cable came off.

Q. How long ago is that?

A. Oh, it must be—it is a long time ago, it is a long time ago.

Q. Is it more than three years ago?

A. About two or [491—409] three years ago.

Q. A year before Mr. Ward was hurt?

A. Before Mr. Ward was hurt.

Q. Long before?

A. Yes. I always understood there would be trouble with two or more cars or three cars coming on the curve at one time and pushing others around it. On that occasion I saw the cable come off; there were two or three cars, I don't know exactly how many came around this curve. There were some empty cars up here and the car came along gripping the cable and pushing the cars down there and the and the cable came off at that time, and I experimented afterwards to see if it would do it, and it did the same thing.

Q. That was a long time before the accident oc-

(Testimony of N. E. Gedge.)

curred? A. Yes, sir.

Q. And due to the number of cars?

A. Due to the number of cars coming on here at one time.

Q. Coming on there at one time? A. Yes, sir.

Q. On the eight pulley or where?

A. Yes, sir; shoving the cars on the eight pulleys. I was standing down here somewhere, and I saw the cars coming along here, and one car being shoved.

Q. And where was the cable off?

A. The cable flew out, as I told you on the Saturday, out of the slot, the first car, out of the chute or slot that the cable comes in where it is attached to the car. These cars were laying here empty, and the grip thrown open and a car came along pushing that car along here and this flew out of the slot and they stopped the engine and when they pushed the other cars back, it flew off the rest of them.

Q. Out of this full series of eight pulley?

A. Yes, sir.

Q. What slot did the cable come out of?

A. I mean out of the thing that holds it to the car, that grips it on the car, [492—410] the shoe.

Q. You have seen that shoe a good many times, have you not? A. Yes, sir, I have.

Q. And these cars are all built on the model—they are C. W. Hunt cars, are they not?

A. They are Hunt cars.

Q. And this track is what they call the track used by the C. W. Hunt Company of New York?

A. Yes, sir.

(Testimony of N. E. Gedge.)

Q. The shoe to which the cable is connected is built on the same radius, is it not, as the curve?

A. The shoe is perfectly straight, if I remember correctly. I would not be sure of it, but I think it is straight.

Q. It is perfectly straight, or don't you know, Mr. Gedge, that if that shoe was perfectly straight you could not go around a curve at all? Don't you know that from your own observation?

A. No, it may be.

Q. I will ask you, Mr. Gedge (showing witness book), is not that correct?

A. I cannot say without going and looking at the car; I just glanced at it; I made no examination of the different parts of the car. I could not describe anything more than the rough car as it is to you; I could not give you any description of any special parts, because I don't know.

Q. You have been down there for years?

A. Yes, but I don't know every little word; if I was a mechanic I would probably know all these things, but I don't know.

Q. And you could not say whether that is correct or not? A. No, I could not.

Q. You don't know whether the shoe is built on any radius, your idea is that it is straight?

A. I could not answer that, Mr. Douthitt, because I don't know; it is a little flaring or changed; what it is underneath, I could not say.

Q. Now, the flanges on those wheels you have observed those, have you not?

(Testimony of N. E. Gedge.)

A. What do you mean, these things? [493—411]

Q. No, no, the flanges on the wheels of the cars, the coal-cars? A. Not particularly.

Q. Well, refresh your recollection by looking at this Mr. Gedge (handing witness book)?

Mr. STANLEY.—We object.

Mr. DOUTHITT.—The twenty-three inch measurement was from the outside edges of the rails and the inside measurement was twenty inches in answer to the question from the juror.

A. Yes, that was it.

Mr. STANLEY.—The witness says he is not a mechanic or engineer and knows nothing about these things. We object to it as not proper cross-examination.

Mr. DOUTHITT.—That question was withdrawn.

Q. You have seen, have you not, Mr. Gedge, the construction of these rails, how the rails are constructed?

A. I saw the rails there; I don't know about the construction; I have had no reason—

Q. You have made measurements there of the distance between rails, have you not?

A. Yes, sir; I have some measurements there, but I know nothing about the construction of the rails.

Q. And you have made measurements as to the length of the ties? A. I have.

Q. And what did you measure in answer to a question, what was that twenty-inch measurement that you said you had made?

A. The inside of the rails, measured with a ruler,

(Testimony of N. E. Gedge.)

the inside of the rails, about twenty inches.

Q. On the curve or on the straight track?

A. Just here on the curve.

Q. Twenty inches inside on the curve?

A. Yes, sir.

Q. Did you observe that on the—what was the distance that you measured which was twenty-three inches?

A. The distance in measuring here inside of this rail was a little bit [494—412] thicker than this appears to be up here and here. I don't know the reason why it is for some twenty-three or twenty-three and a half inches. Then I measured twelve inches on each side of the track, is about twelve inches of ties.

Q. Then from the outside of the rail this is near the middle? A. I understand.

Q. From the outside of the rail to the outside of the other rail at the Ewa side was twenty-three inches?

A. From the outside of this rail here to the outside of this little extension, whatever it happens to be there, is twenty-three and a half inches.

Q. Well, from the outside of the rail to the outside of the rail?

A. About twenty-three and a half inches.

Q. You also noticed that on the Ewa side of the track, the outer track, that there was a flange that went down here, didn't it?

A. I don't know, sir, I just stood on this side here and put a ruler across the top and took the rough

(Testimony of N. E. Gedge.)

measurements, twenty-four inches, twenty-three and a half inches, and twenty inches to about twelve inches.

Q. You don't know whether there is a flange in the track? A. No, I do not.

Q. Where it runs along for example these rails and there is a little projection or flange in the track coming up like this and running off to here?

A. No. I knew there was a little something here that was thicker.

The COURT.—You would not know the difference between a lug and a flange on a thick plate, would you? A. No, I do not.

Mr. DOUTHITT.—That is not the situation of affairs, is it?

A. I don't know. I only know that there is a little thickness on this side that I happened to take notice of.

Q. But you don't think that is correct, showing you an illustrated drawing, for example, this might do at the extreme left of the page refers to the outer rail?

A. I was not [495—413] on the outside at all; I stood over here and just put the ruler across and measured.

Q. The cable came off the pulleys on that one occasion in *in* making that one experiment?

A. On one occasion.

Q. Was it tried several times?

A. I think it came off the first time I experimented with it.

Q. Did you try it again?

A. I am not positive.

(Testimony of N. E. Gedge.)

Q. Do you know the length of those cars from bumper to bumper? A. No, sir.

Q. About ten feet, is it not?

A. That I could not tell you.

Q. Do you know the distance of these eight pulleys between pulley and pulley on the series of eight?

A. No, sir.

Q. Do you know, Mr. Gedge, that it would be impossible to get three of those cars on this—on the Ewa side of the track of the series of eight pulleys?

A. I never said there were three cars on those eight pulleys; I said there were three cars on that side of the track. Possibly one was on part of the eight pulleys, and the others going on. Three cars are quite a distance.

Q. I thought you said they were all together?

A. I said following each other around the curve, the last car pushing the one or two ahead of it around the curve.

Q. But all close together?

A. All close together.

Q. So that they would be spread out?

A. One up against the other.

Q. And it came off the series of eight pulleys?

A. It did not come off right at once, the series of eight pulleys, it came off afterwards when it started to push the cars ahead and then it flew off all of them when they were removing the cars on that particular point.

Q. They released the grips?

A. Only the last one was gripped, the others were

(Testimony of N. E. Gedge.)

not gripped. [496—414]

Q. The others were not gripped? A. No, sir.

Q. When you released the grip on the last car—

A. The cars pushed away and the thing came off.

Q. Did the grip and all come out?

A. What is that?

Q. Did the grip come out, too?

A. What do you mean?

Q. The grip, the shoe, come out from the pulleys?
Objected to as unintelligible.

Q. You say that the last car was attached to the grip—the cable was attached to the grip or the shoe in the last car? A. Yes, sir.

Q. And that was pushing it around the curve?

A. Yes, sir, pushing on it to the curve.

Q. Did the grip fly off the pulleys—fly over the pulleys?

A. I didn't see the grip fly over the pulleys, no, sir.

Q. How did the cable get out, then?

A. I could not tell you just exactly how the cable came out. I know the cable came off but how it came off I don't know. I only know there were cars going around that curve. I could not explain why they came off or why they didn't come off. I only know that they came off there once while I was there, that was all.

Mr. DOUTHITT.—I offer this report of Akina in evidence.

The COURT.—It may be received in evidence and marked Plaintiff's Exhibit "G."

(Testimony of N. E. Gedge.)

A JUROR.—I would like to ask Mr. Gedge one question. You say there was one car gripped pushing the other cars on that curve?

A. Yes.

Q. When they are pushing the cars was the cable in the shoe or is the cable thrown out altogether?

A. The cable is in the shoe.

Q. Of all three cars?

A. Of all three cars.

Q. But only gripped on the car pushing?

A. I think the car that grips the cable behind it raises the cable up, has a tendency to raise the cable up. I think that all grips the [497—415] front of the car gripping the cable. It is a kind of raising appearance. Here is the cable here and I think that might possibly be why the cable came off, I don't know.

Q. In closing the grip on one of the cars does the lower part of the grip raise?

A. No, the top has a wheel that you turn around and the thing goes down and holds it. I don't know what you call it but something goes down and holds it.

A JUROR.—The bottom of the grip has an ordinary vise arrangement? A. Yes.

Q. When it is not gripped it goes through, does not hold? A. It goes past there, does not hold.

Mr. DOUTHITT.—And those experiments, Mr. Gedge, were conducted on the same cable that was in use on the 8th day of July, 1912, the ones you just testified to? A. No, sir.

(Testimony of N. E. Gedge.)

Q. What? A. No, sir.

Q. Why didn't you say that it was during the last trial—that they were conducted on a different cable, were they? A. A different cable, yes.

Q. A different cable? A. Yes, sir.

Q. That was after Ward was here?

A. Yes, sir.

Q. Now, you have said here that the wages for tallying sugar were four dollars a day?

A. Yes, that is what I pay. I hire men occasionally.

Q. And that is what you pay? A. Yes, sir.

Q. A man who tallies sugar has to keep an account, has he not, and mark down each bag of sugar as it comes from the hold?

A. Well, there are slings of ten or fifteen bags, say fifteen at a time, or if a man is calling out he simply has to be put down and make one of them call tally; which is five bags or ten bags, whatever it is of.

Q. He has to write that down in a book?

A. To write down a mark for each tally. [498—416]

Q. And if there is not a man calling out the number of bags he has to look up and count it if it is going up out of the hold, if the grip was raised up in the air it stops there a few seconds or it may be go up on and you could not tell—

A. When we are discharging our own steamers they take the sling up off our steamers and it remains on deck for half a minute or a minute or two minutes and they pick it up again and take it on

(Testimony of N. E. Gedge.)

board and you count the sling whatever it is on the steamer, when we are discharging the American-Hawaiian steamers.

Q. And sometimes it is a minute, did you say?

A. Goes up in the air and remains there a little while and is taken on board. They bring up the sling on the deck of our steamers.

Q. Does it require a man to move around?

A. No, sir.

Q. You can sit in a chair?

A. You can sit in a chair and watch, the hold is right in front of you.

Q. But he has got to see what is going on there, watch what is going on there and see if there is ten or fifteen loads in the sling ready to tally?

A. Yes, sir.

Q. He has to see that and tally it and check it himself? A. Yes, sir.

Q. When did you have this conversation with Mr. Ward, while he was in the hospital?

A. Directly before he went home.

Q. Well, you say that he was in the hospital fifty-six days?

A. Well, I knew that from the bill I paid. I paid the hospital bill and on it was fifty-six days. I paid fifty-six days service in the hospital.

Q. Do you remember how long it was prior to the time he left the hospital?

A. Not very long, I cannot remember exactly. I was up there several times. It was when he was stopping outside.

(Testimony of N. E. Gedge.)

Q. What was the exact conversation that you had with him?

A. Oh, I could not tell you that I stayed there and talked [499—417] for quite a little while. I was there quite a little while with him, talking about different things.

Q. What was the exact conversation you had with him?

A. Well, we talked about many things, many things, but about just what particular things I do not remember. We talked about himself.

Q. Yes.

A. We talked about himself, how he felt and one thing and another and I asked him why in hell he ever took and tried to put the cable back the way he did.

Q. Yes, why in hell he ever tried to put the cable back in the way he did? A. Yes, sir.

Q. And what did he say?

A. He said he thought he could save some time by doing it.

Q. Save some time by doing it?

A. Yes, sir, he was foolish but he thought he could save time by doing it.

Q. Said he was foolish? A. Yes, he did.

Q. Didn't you have a conversation with Ward about three weeks after he left the hospital?

A. I cannot say it is just three weeks after he left the hospital, because I left about that time for California and Mr. Ward was down on the wharf when I went away. I saw him down there, but I have

(Testimony of N. E. Gedge.)

been at his house.

Q. You have been at his house?

A. Yes, I have been at his house, I went to his house, I remember.

Q. That was some time after he left the hospital?

A. Yes, after he left the hospital, I saw him at his home.

Q. Didn't you at that time, Mr. Gedge, at Ward's house here on Kinau street, some two or three weeks after Ward left the hospital complain to Ward and tell him that Kennedy, meaning Kennedy, the president of the Inter-Island Steam Navigation Company, had taken you away from the coal-conveyor and put Mr. Sheedy in your place?

A. No, sir, I did not.

Q. When was Sheedy installed?

A. Mr. Sheedy came to [500—418] work for our company—

Objected to as incompetent, irrelevant and immaterial.

Mr. DOUTHITT.—To show that he was in charge of that coal-conveyor. That is the purpose of it.

Objection overruled.

A. No, sir.

Mr. DOUTHITT.—Q. Well, isn't it a matter of fact, Mr. Gedge, that shortly after Ward was hurt, that you were relieved of your duty down there at the coal-conveyor and Mr. Sheedy was put in your place? A. No, sir.

Objected to as incompetent, irrelevant and immaterial.

(Testimony of N. E. Gedge.)

terial; motion to strike answer out.

Motion granted, objection sustained.

Mr. DOUTHITT.—Is it not a matter of fact, Mr. Gedge, that as soon as Ward was hurt an investigation was immediately made by you and the officers of the company, that the witnesses—witnesses were examined by the attorneys for the company, Mr. Warren and Mr. Hemenway, of the firm of Smith, Warren & Hemenway & Sutton and the statements of all the witnesses who were there were taken at that time, and the witnesses were examined by the attorneys for the company?

Objected to as not being proper. Objection sustained.

Mr. DOUTHITT.—I want to show that they did investigate thoroughly and completely the facts of this accident, had their witnesses down at their attorneys offices and examined them, took their statements of all the men who were employed there at the time this accident happened and then he said that he knew nothing about it or that Ward intended to bring any suit he said he did not know Ward intended to bring a suit until the complaint was actually filed and for that reason not knowing that Ward was going to bring any suit he then gave away the cable.

Objection sustained. [501—419]

(July instructed to disregard remarks of counsel as to what he expects to prove by the witness.)

Redirect examination of NORMAN E. GEDGE.

Mr. STANLEY.—Counsel have offered in evi-

(Testimony of N. E. Gedge.)

dence exhibit "F" here, supposed to be a note you wrote Mr. Ward in connection with the ship "Dix." Will you explain to the jury what that means?

Objected to. Question withdrawn.

Mr. STANLEY.—Will you explain the circumstances, Mr. Gedge, attending the sending of that note to Mr. Ward?

Objected to as immaterial. Objection overruled. Exception.

A. I will state that Captain Game, depot quartermaster, had purchased a great quantity of coal, and it was necessary to see if we could handle the army coal which was imported in the "Dix," she brings in the coal for army transports here and Mr. Ward went to see if she was a suitable vessel to go under our conveyer.

Q. What do you mean?

A. Whether she could work under the conveyer and we send a bid to the government, which we did send a bid to the government but our bid was too high. It was simply a case of using her at our conveyer, handling coal for the government at our conveyer.

Q. What was Mr. Ward going down there for?

A. To see if she was suitable to bring under our conveyer.

Q. To see if she was too long, too short, too high, or what?

A. Too long and the lay of the hatches and coal and so forth.

Q. That is whether with the towers you had you

(Testimony of N. E. Gedge.)

could work the vessel or not?

A. Whether we could do that business for [502—
420] the government or not.

Q. And you had Mr. Gedge go over there to give you an expert opinion as to whether you could do that work—Mr. Ward I mean?

A. That was the idea.

Q. Now, Mr. Gedge, you have been interrogated as to ordering Ward to merely take out of the coal vessel some five hundred tons a day, what have you to say about that?

Mr. DOUTHITT.—I object to that, he has denied it.

Objection sustained.

Mr. STANLEY.—I understand that you have never given Mr. Ward any such directions.

Objection to as leading and not redirect examination. Objection sustained.

Q. Now, Mr. Gedge, you were asked as to when you started the discharge of the "Guernsey" and you said on July 3d and you were asked how much coal you got out on July 6th and you replied that you got out five hundred and thirty-seven tons and nine hundred and thirty pounds. Five hundred and thirty-seven tons and nine hundred and thirty pounds; can you state how it was on July 6th that only that amount of coal was taken out of the "Guernsey"?

A. On account of cleaning out the holds the work gets slower when you have to take the holds and trim to the draught.

(Testimony of N. E. Gedge.)

Q. Had that anything to do with the arrangement with consignees or consignors of the cargo that your minimum should be five hundred tons?

A. No, sir, that has nothing to do with it.

Q. Can you tell us, Mr. Gedge, you say you started discharging about on July 3d, will you tell us what the tonnage was that you took out of the boat on July 3d, 4th and 5th?

Mr. DOUTHITT.—That was objected to when I tried to get it out on the ground that it was absolutely immaterial and the objection was sustained. I object to it.

Objection sustained. Exception. [503—421]

Mr. STANLEY.—You testified on one occasion, Mr. Gedge, on cross-examination, that you made an experiment to see how cars, two or three of them being in succession going around a curve or on to the curve, would come off, who were present when you made that experiment?

Mr. DOUTHITT.—He has already testified to this on direct examination.

The COURT.—Is this the same time that you asked him with reference to before?

Mr. STANLEY.—No, your Honor.

Q. Who was present when this experiment you speak about sending the cars around the curve two or three of them, were made?

A. Mr. Sheedy and Mr. King.

Q. And how many times did you see cars leaving the track on this occasion of this experiment?

Mr. SUTTON.—The cable.

(Testimony of N. E. Gedge.)

Mr. STANLEY.—The cable leaving the track on this experiment?

Mr. DOUTHITT.—He testified to that, that his only recollection is that he saw it once.

Objection overruled.

Mr. STANLEY.—On this occasion that you testified to having been present and seeing the cars being sent around the curve, on that experiment you say that Mr. Sheedy was present and Mr. King?

A. Yes, sir.

Q. How many times during that experiment did you see the cable leave the pulleys?

A. Only once.

Mr. STANLEY.—There is one set of questions I omitted to ask Mr. Gedge on direct examination on a new subject.

Mr. DOUTHITT.—No objection.

Mr. STANLEY.—Mr. Gedge, what wages was Mr. Ward receiving at the time of this accident?

A. Six dollars a day.

Q. Was that six dollars a day, day in and day out? [504—422]

A. Six days a week, six days a week.

Q. Is that irrespective of where he was working?

A. No, that was when he was working at the coal ships, five dollars a day at the shop.

Q. Five dollars a day at the shop, when on the coal ships? A. Six dollars.

Q. And about, can you say on the average how many days in the month, twenty-six working days, Mr. Ward would be receiving six dollars a day?

(Testimony of N. E. Gedge.)

A. Six or seven days, whenever a coal ship was in, it depended.

Q. Taking the year, how many vessels come in during the past year Ward was working there?

A. Well, I guess there was about twelve vessels in 1912, I think about seven or eight in 1911.

Q. And how many days in the month would be occupied in discharging these coal vessels?

A. Well, from five to seven days, something like that.

Q. You say five dollars a day working at the shop and six dollars a day working at the coal ships, what do you mean by that?

A. Working at the coal-conveyor.

Recross-examination of NORMAN E. GEDGE.

Mr. DOUTHITT.—And overtime?

A. Yes, sir, he would get overtime.

Q. The five and six dollars a day was the ordinary eight hour day? A. Nine hours.

Q. And overtime was paid at the rate of what?

A. I cannot say off-hand, I think Mr. Ward got about seventy-five cents [505—423] an hour, but I am not sure about that.

Q. Don't you know, Mr. Gedge, that it was for a period—he was engaged in an eight-hour day, for example, from seven o'clock in the morning until 12 and from one o'clock in the afternoon until four?

A. From 7 till 12 and one till 5 down at the conveyor.

Q. That is the hours? A. Yes, sir.

Q. That is nine hours?

(Testimony of N. E. Gedge.)

A. That is nine hours.

Q. And then if he worked over the nine hours he was to receive how much?

A. That I could not tell you, but I think about seventy-five cents an hour, per hour, I am not sure.

Q. In other words the overtime, if he worked overtime he was given—if he worked an hour he was credited with an hour work, is not that correct, he would be given say for an hour and a half's work?

A. Yes, sir, if he worked there.

Q. If he worked after six?

A. If he worked after five o'clock he would get time and a half, whatever that was.

Q. Mr. Sheedy and Mr. King are employees of the Inter-Island Steam Navigation Company, are they, Mr. Gedge? A. Yes, sir, they are.

Q. What does Mr. Sheedy do?

A. He is the outside man, superintendent of the company.

Q. Superintendent of the company?

A. Yes, sir.

Q. Does he superintend the coal-conveyor, too?

A. Yes, sir, and general supervision over the whole thing. We have Mr. King down there.

Q. Mr. King? A. Yes, sir.

Q. Mr. King has taken Ward's place?

A. He is there in charge, yes, sir.

Q. He is in charge now? A. Yes, sir.

Q. He is in charge steadily, every day?

A. Yes, sir, he is down there. The plant has in-

(Testimony of N. E. Gedge.)

creased and he is down there [506—424] altogether.

Q. I believe you stated also on cross-examination that if the work was not progressing at the coal-conveyor in a manner—in a manner which ——— to the contract of your company for discharging coal— A. Yes.

Q. That you would have reported that matter to Mr. Kennedy?

A. I will tell you the reason why I reported to Mr. Kennedy.

Q. Supposing Mr. Kennedy was not there who would you report to?

A. Mr. McLean is vice president and acting manager of the company when Mr. Kennedy is not there.

Q. You would have reported to him?

A. I presume I would if there was anything turned up. He was acting manager, he assumes charge when Mr. Kennedy goes away.

Q. You would have left your work down there and gone all the way up to the office without saying a word to anybody?

A. My work was not down there, my regular work was not down there, I do go there occasionally.

Q. You were there every time a ship was in?

A. Yes, sir. I was down there, I don't stay there all day long, I had other work to do.

Q. You stayed there a considerable length of time, didn't you?

A. I would be there several times a day.

[Testimony of John Scott Muirhead, for Defendant.]

Direct examination of JOHN SCOTT MUIR-HEAD, called for the defendant, sworn.

The CLERK.—What is your name?

A. John Scott Muirhead.

Mr. STANLEY.—Where do you reside?

A. Kalakaua Avenue, Honolulu. [507—425]

Q. How long have you resided in the territory?

A. In the islands, oh, about twenty-five years.

Q. How old are you, Mr. Muirhead?

A. I will be sixty-two, coming October.

Q. And where are you employed, Mr. Muirhead?

A. Inter-Island Steamship Company.

Q. What business, if any, were you raised to?

A. Locomotive and marine engineering.

Q. And where did you get your first training?

A. Merrifield in Leeds.

Q. In Scotland? A. Yes, two years there.

Q. In the office or shops? A. In the shops.

Q. And where else did you go?

A. Three years in A. J. Ingalls, Glasgow, that is where I finished my apprenticeship.

Q. And after you finished your apprenticeship where were you employed?

A. Oh, in various shops both on the Clyde and also in Liverpool.

Q. And after that you came out to the islands?

A. No, sir, I sailed in the P. & O. service for years.

Q. For what corporation?

A. Pacific and Oriental Navigation Company.

(Testimony of John Scott Muirhead.)

Q. The P. & O.? A. Yes, sir.

Q. In what capacity? A. Sea engineer.

Q. State whether or not you have any engineer's papers.

A. Yes, sir, I have got an English certificate of chief engineer, I have got a Japanese and I have got an American.

Q. As chief engineer? A. Chief engineer.

Q. And after you left the P. & O., where did you go?

A. I was in the "Australia" running up and down here for the Spreckels steamboats.

Q. In what capacity? A. Chief engineer.

Q. And after that?

A. I was up in the Kukaiau Mill. [508—426]

Q. As what? A. As mill engineer.

Q. And then? A. The Hakalau.

Q. And you were on various plantations, were you?

A. Hakalau, then I was in Spreckelsville.

Q. All as chief engineer?

A. And Wainaku, yes, and I was the assistant engineer in Spreckelsville.

Q. Wainaku is outside of Hilo? A. Yes, sir.

Q. As chief engineer there? A. Yes, sir.

Q. Then you finally got down to Honolulu?

A. Yes, sir.

Q. And where have you been employed here?

A. Oh, I have been employed at Waimanalo, down at Oahu Plantation, Honolulu Plantation, Ewa Plantation.

(Testimony of John Scott Muirhead.)

Q. In what capacity?

A. As engineer, erecting the machinery there.

Q. At Ewa? A. At Ewa.

Q. And on Oahu?

A. I was the same, erecting machinery.

Q. That would be about shortly after annexation when these new mills were going up?

A. They were erecting the new mills then, sir?

Q. At Oahu? A. Yes, sir.

Q. And then you finally got a job in town?

A. No, I was over at the fertilizer works after that.

Q. As engineer? A. As engineer there.

Mr. DOUTHITT.— We do not deny the fact that he is in charge at the Inter-Island shops.

Mr. STANLEY.—Where were you employed after you came to Honolulu after leaving the plantation?

A. The fertilizer works.

Q. We have already had that. -A. You are working now at the Inter-Island?

A. I joined the "Mauna Loa" as chief engineer.

Q. You are working now for the Inter-Island?

A. Yes, sir.

Q. You are in what capacity?

A. As superintendent, superintending engineer.

[509—427]

Q. As such what are your duties, Mr. Muirhead?

A. General superintendent over the—all the machinery belonging to the company.

Q. That includes what?

A. The steamers and the outside work.

(Testimony of John Scott Muirhead.)

Q. The steamers and the outside work; what outside work? A. Well, the coal-conveyor.

Q. Anything else?

A. That is about all the machinery they have.

Q. Does the Inter-Island run machine-shops?

A. Yes, sir.

Q. Who is in charge of them?

A. I am in charge of them.

Q. And how long have you been with the Inter-Island? A. About eleven years.

Q. In this relation of superintending engineer?

A. Yes, sir.

Q. Now, Mr. Muirhead, do you know the plaintiff in this case, Mr. Ward? A. Yes, sir.

Q. How long have you known him?

A. Oh, I should think, well, about the time they were erecting the Oahu Mill he happened to be down there about the same time as I was.

Q. Prior to this accident he was in the employ of the Inter-Island Steam Navigation Company, was he not? A. Yes, sir.

Q. And how long had he been in that employment at the time of his accident—how long had he been in the employ of the Inter-Island Company before his accident?

A. From the first time he was employed, do you mean, in the Inter-Island?

Q. Yes.

A. Well, he was backward and forward on different occasions.

Q. Well, about how long is it since he first joined the Inter-Island?

(Testimony of John Scott Muirhead.)

A. Oh, I should say about ten years, ten or eleven years; it was shortly after I went there myself; I took him on.

Q. And then he worked off and on there?

A. Off and on. [510—428]

Q. Now, you are familiar with the coal-conveyor plant of the Inter-Island Steamship Company?

A. Yes, sir, I was there when it was erected.

Q. By whom was it erected?

A. By Mr. Ouderkirk; he done all the wood work and Mr. Ward he was under me there.

Q. Mr. Ward what?

A. Mr. Ward he was in charge of erecting of all the structural work.

Q. When you say he was under you, what do you mean? A. I put him there.

Q. You put him there? A. I put him there.

Q. And was the work done according to plans and specifications? A. It was, sir.

Q. And by whom were those given to Mr. Ward?

A. I got the plans from the—from Mr. Kennedy and turned them over to Mr. Ward.

Q. Had Mr. Johnson, formerly superintendent of the Inter-Island anything to do with the--

A. No, he had nothing to do with that whatever, sir.

Q. Now, can you remember how long ago it is since the coal-conveyor was erected?

A. Oh, I should fancy it is about five years or so, in that neighborhood. I have no dates.

Q. Now, the operations of that coal-conveyor were

(Testimony of John Scott Muirhead.)

—the plant was used for loading the Inter-Island vessels, was it not, and also for unloading foreign ships? A. Yes, sir.

Q. Now, after the erection of the plant what, if any, connection had Mr. Ward with that coal-conveyor?

A. He had full charge when there was a vessel in discharging coal there, full charge over the plant entirely.

Q. Full charge over the plant?

A. Full charge of the plant entirely.

Q. Full charge of the plant entirely?

A. Yes, sir, entirely as an engineer. [511—429]

Q. What? A. As an engineer.

Q. What was Mr. Ward's occupation and profession? A. Engineer.

Q. When you say Mr. Ward had full charge of that coal plant— A. Yes.

Q. That is on all occasions or when?

A. Beg pardon?

Q. Do you mean upon all occasions Mr. Ward had charge of the coal-conveyor plant, or when?

A. When there was a coal vessel discharging coal.

Q. And who put Mr. Ward in that position?

A. I did, sir.

Q. Under whose instructions?

A. For to put him in charge there, I had no special instructions from them, but I put him in charge there myself because he was familiar with the plant.

Q. Now, what were Mr. Ward's duties in connection with that plant when a coal ship would be in port

(Testimony of John Scott Muirhead.)

and discharging its cargo at the conveyor?

A. Well, his duties is there as an engineer to keep the plant in working order in case of a breakdown.

Q. And when you say the plant, what do you mean to include?

A. The whole of the conveyor, the whole of the coal plant.

Q. Do you mean the—

A. The engines, the line or anything of that kind. He had full charge; if anything was wrong he was there to make good any repairs.

Q. And when you say the line, to what do you refer?

A. I call this the line, when pulleys wear out the wire or anything of that kind.

Q. By the line, then, I understand you to mean the wire or cable upon which the cars run?

A. Yes, sir.

Q. Or by which the cars are drawn; that is right?

A. Yes.

Q. What authority, if any—oh, you have testified to that. About repairs, you say he had to do all repair work? A. Yes, sir. [512—430]

Q. To whom did the company look, Mr. Muirhead, for repairs being made, spares being required to be put in?

Objected to. Objection sustained.

Q. Who was responsible, Mr. Muirhead, for seeing that spares were put in when needed or general repair work down on the conveyor?

A. Mr. Ward was responsible to me.

(Testimony of John Scott Muirhead.)

Q. As superintendent engineer of the company?

A. Of the company.

Q. What provision did the company make, Mr. Muirhead, for the replacing of worn-out material, cables, drums or anything else?

A. Well, we had spares there all ready to go in, sir.

Q. The spares, where?

A. Laying down underneath here, a spare cable.

Q. Down underneath?

A. Underneath near handy to the engine, where they *could cannot* up to.

Q. Underneath the coal-conveyor on the wharf?

A. Yes, sir.

Q. Now, you say you remember the occasion of the accident to Mr. Ward. Do you remember whether or not a foreign coal ship was in port at that time?

A. Yes, sir, there was one.

Q. What, if anything, was done with regard to the coal-conveyor prior to the arrival of the coal ship?

A. Well, prior to the arrival of the coal ship I notified Mr. Ward to go over and see that everything was in good working order; would be perhaps about a week previous to the arrival, especially the lower tower there because they were never worked as a rule from the ship previous.

Q. You instructed Mr. Ward to go down there and see that everything was all right? A. Yes, sir.

Q. Did Mr. Ward go down? A. Yes, sir.

Q. State whether or not Mr. Ward said anything to you after having gone down and inspected the coal-conveyor.

(Testimony of John Scott Muirhead.)

A. Yes, sir, [513—431] he told me the next day that everything was all O. K.

Q. State whether or not, Mr. Muirhead, it was ever reported to you by Mr. Ward that a new cable was needed on that coal-conveyor, prior to the arrival of that vessel.

A. No, he never reported anything to me about it.

Q. Was any complaint made to you, Mr. Muirhead, by Mr. Ward as to the condition of the cable prior to the time of his accident?

A. No, sir, none whatever.

Q. State whether or not Mr. Ward prior to the—what was your custom, Mr. Muirhead, with regard to visiting this coal-conveyor?

A. Well, I used to go down there about once or twice a day regularly while a ship was in.

Q. And to what part of the coal-conveyor would you go?

A. Well, I would go up around about the drum there, on top where the scales are and sometimes I would go aboard the boat.

Q. You say you would go on top, what do you mean on top?

A. Along in about this neighborhood here (indicating on model).

Q. Near the scale-house, do you mean?

A. Yes, sir.

Q. Did you ever go anywhere else on the coal-conveyor?

A. Oh, yes, take a walk around there sometimes.

Q. Now, Mr. Muirhead, had you occasion to ob-

(Testimony of John Scott Muirhead.)

serve the condition of the cable shortly prior to Mr. Ward's accident?

A. Yes, I seen it daily before that.

Q. How? Describe to the jury, Mr. Muirhead, its condition. A. Is this a piece of the wire?

Q. Well, that is a sample of a wire. Describe the condition of the cable to the jury.

A. Well, generally it was slightly chafed on the outside.

Q. What do you mean by that exactly, Mr. Muirhead, you can explain by reference to this section of the cable.

A. On this outside wire here severally lightly chafed. [514—432]

Q. Worn out?

A. Worn out slightly; there is a rough edge you can feel it if you pull your hand along.

A JUROR.—Just on the outside there?

A. Just on the outside.

Q. Which side, on the top or around—

A. No, right around here (indicating).

Mr. STANLEY.—You say it was slightly chafed and one of the jurors asked you if it was worn out and you said yes. What do you mean by that?

A. What?

A JUROR.—He said slightly worn.

Mr. STANLEY.—Was that cable worn out, Mr. Muirhead? A. No, it was not worn out.

Q. What was its condition as to being suitable for use for the purpose for which it was in use?

A. It was perfectly suitable then.

(Testimony of John Scott Muirhead.)

Q. When you say it was slightly worn and chafed are you referring, Mr. Muirhead, to the small wires or the strands of the cable?

A. The small wires generally around here; the outside edge right around.

Q. And was that the condition of the cable all around the cable or in places?

A. No, pretty well all throughout.

Q. Mr. Muirhead, how long before the accident was that? A. Oh, I am up there about every day.

Cross-examination of JOHN SCOTT MUIRHEAD.

Mr. DOUTHITT.—You don't know how long that was before the accident, Mr. Muirhead?

A. Beg pardon.

Q. You don't know how long that was before this accident?

A. I was up there about a week before that and I examined [515—433] the cable myself. I am up there every day.

Q. What is that? A. I am up there every day.

Q. And are you referring to the time that George Ward was hurt or a week before that?

A. I am referring to the time and a week previous.

Q. Then you didn't know the condition of that cable, Mr. Muirhead, at the time when Ward was hurt, did you?

A. I do know the condition of that cable.

Q. Well, didn't you mean to say that you were testifying to the condition a week prior to the time that Ward was hurt?

(Testimony of John Scott Muirhead.)

A. I said a week previous; also at the time that Ward was hurt.

Q. Oh, at the time that Ward was hurt?

A. Yes, sir.

Q. And you came down there on the coal-conveyor on the day that Ward was hurt?

A. Yes, sir, I was there that day that Ward was hurt.

Q. And you saw the condition of the cable?

A. I saw the condition and I saw the condition previous to that.

Q. That cable was perfectly suitable for the purpose for which it was being used, was it?

A. Yes, sir.

Q. Yes. And the only thing, Mr. Muirhead, that you observed as far as that cable was concerned was that it was slightly worn? A. Yes, sir.

Q. Do you know how long that cable had been in use?

A. Well, perhaps I might give an estimate; I don't know if it would be correct.

Q. Well, you have had a great deal of experience, Mr. Muirhead, with cables. How long would you say that that cable had been in use?

A. Well, I could not tell you how long it had been in use.

Q. Well, you were down there two or three times a day, were you not?

A. Yes, but I don't remember when it was put [516—434] in.

Q. You do not? A. No, sir.

(Testimony of John Scott Muirhead.)

Q. Well, from your general knowledge of the situation being down there twice a day or two or three times a day, you were perfectly familiar with that cable, were you not, Mr. Muirhead?

A. I believe I was.

Q. You were? A. Yes.

Q. And you could not tell us, then, how long the cable had been in use? A. No, sir.

Q. But at the time of this accident you went down there and saw that the cable was perfectly fit for the purpose which was required of it?

A. I went down there that day, as I go down every day.

Q. How long after the accident was it that the cable was taken away?

A. Well, I suppose after the ships were finished, there was a new cable, I believe.

Q. What do you mean by suppose?

A. There was three ships arrived, all coming in together.

Q. Don't you know, Mr. Muirhead, that that cable was taken out on the Saturday immediately after the Monday after George Ward was hurt; don't you know that? A. No, sir, I do not.

Q. You do not? A. No.

Q. But you were down there every day?

A. Yes.

Q. You didn't go down there to the conveyor after Ward was hurt then? A. Oh, yes, I did.

Q. You did not go down to this coal-conveyor after Ward was hurt?

(Testimony of John Scott Muirhead.)

A. Yes, I went down there after Ward was hurt.

Q. And you went there twice a day, did you, Mr. Muirhead? A. Sometimes twice and always once.

Q. What?

A. Sometimes twice and always once.

Q. And you don't know and cannot tell this jury that that cable, Mr. Muirhead, was taken out on the the Saturday immediately [517—435] following Ward's accident?

Objected to as already asked and answered.

Objection sustained.

Q. And there was nothing so far as you observed at the time that Ward was hurt which led you to believe that the cable was otherwise than in perfectly good condition for the work that was required of it?

A. I considered it was in perfectly good condition for that work.

Q. And would have been in perfectly good condition, Mr. Muirhead, for the next eight or ten days afterward?

A. Well, I don't know what transpired between that and the—

Q. No, I am not asking you about that. From what your observation was, your observation of this cable, it was in perfectly good condition so far as you could say and would have been under ordinary circumstances in perfectly good condition for a week or a month or two months after the accident happened, would it not? A. It might and it might not.

Q. Well, now, I am asking you as you saw it?

(Testimony of John Scott Muirhead.)

A. Well, I cannot tell; the inside core if it remained employed is going to get rotten at times, I cannot tell any more than any other man.

Q. What is that?

A. I cannot tell if the inside core is old any more than any other man.

Q. I am asking you as you saw the cable on the day that Ward was hurt, that cable, the indications were as you have told us before? A. Yes.

Q. That the cable was all right for the purpose for which it was being used, only it was slightly worn; that is your testimony, is it not? A. Yes, sir.

Q. And from your observation of that cable, Mr. Muirhead, as you saw it on that day, that cable in your opinion could have been used for possibly a month or two months afterwards, could it not, as you saw it?

A. Yes, but I believe they were [518—436] changing a drum.

Q. Oh, that changing the drum happened a month before, Mr. Muirhead? A. Oh, no.

Q. That change in the drum was not after the cable was it, Mr. Muirhead; you don't want the jury to understand that?

A. The change in the drum was after the cable.

Q. After the installing of the cable? A. It was.

Q. Why?

A. Why, it was ready there, the drum down below there, as I remember, has not the double taper grooves at the sides and it wears out there.

Q. How long do those drums last, how long do

(Testimony of John Scott Muirhead.)

the drums last, a drum that is put on there. You know about these things, Mr. Muirhead?

A. Sometimes six months, perhaps a year.

Q. And if there had been a new drum installed on the 6th day of June, Mr. Muirhead, just one month and two days prior to the time of this accident, there was no necessity for putting in a new drum, was there?

A. I think there was. It depends on whether this drum was curved out at the side. There was one drum there that was too flat; the rope would not fall back.

Q. Was that the drum that was installed on the 6th day of June, 1912, Mr. Muirhead?

A. I don't know the date when it was installed, sir.

Q. Well, did you ever see the drum? If you went down there twice a day did you ever see the drum that was installed on the 6th day of June, 1912?

Objected to, as already asked and answered.

Mr. DOUTHITT.—Well, about a month prior to the accident to Ward you know that there was a new drum installed, about a month prior to Ward's accident, do you not, Mr. Muirhead?

A. Yes, I believe there was one there.

Q. Well, you know it, don't you? A. Yes, sir.

Q. Because Ward had to leave the shop when a new drum was [519—437] put in, did he not?

A. Yes, I suppose he did.

Q. Did you ever see that drum that was put in?

A. Yes, sir, I have seen the drum.

Q. Was the drum all right?

(Testimony of John Scott Muirhead.)

A. Well, I don't think it was. It was too—the flange was not large enough on the sides for the rope to come down properly.

Q. When was the first time that you saw that drum? A. Oh, I could not give you the date.

Q. How long before Ward's accident was it that the drum was observed there?

A. I could not say.

Q. Well, was it a week?

A. Well, I could not say, I am telling you.

Q. Before the coal-boats came in—were the coal-boats in?

A. No, I don't think they were, but I am not quite certain, though.

Q. Well, now, the best of your recollection is, Mr. Muirhead, that the coal-boats were not in; the island coal-boats were being loaded, is that your best recollection; Inter-Island coal-boats were being loaded, is that your best recollection?

A. Yes, sir, they are always being loaded.

Q. Well, I am asking you, Mr. Muirhead, I don't know.

A. Well, I am not quite certain which boats was in whether it was a collier discharging coal or whether it was the Inter-Island boats being coaled.

Q. And you don't know how long before Ward was hurt, whether a week, ten days or a week?

A. I don't know, I could not say positively.

Q. You could not say positively?

A. No, I could not, sir.

(Testimony of John Scott Muirhead.)

Q. Did you observe that the drum was not working properly?

A. I noticed it was climbing up on one side there.

Q. And did you put in a new drum as soon as you noticed that?

A. I believe Ward put in one. Is that the one you have [520—438] reference to?

Q. Certainly, that is the one I am referring to, that is the time Ward put in a drum?

A. Yes, sir. The other one was put there, it was too flat.

Q. There was a shoulder worn on one of the drums? A. Yes, sir.

Q. And Ward put in a new one? A. Yes, sir.

Q. Now, that is the drum you have reference to?

A. That is the drum I have reference to first, then there was another one put in afterwards.

Q. After what?

A. After that time, that was too flat.

Q. After what?

A. After the one that Ward put in.

Q. Yes, was that after the accident?

A. Yes, sir.

Q. How long after the accident?

A. Perhaps a month, after we got clear of the vessels, am not quite certain of the date.

Q. Then it was a month or so after the one Ward put in, that another new drum was put in after Ward was hurt, that another new drum was put in?

A. There was one put in after the coal vessels

(Testimony of John Scott Muirhead.)

were all finished, what time it was, that I don't know, I don't remember the dates or how long it was.

Q. But your best recollection of it is, Mr. Muirhead, that it was about a month or so after Ward was hurt?

A. I won't be positive, it might be a month, it might be six weeks.

Q. Now, this drum that was being used at the time that Ward was hurt, that was in use from the time it was put in until after his accident, wasn't it?

A. That drum was in use until the finish of the coal ships.

Q. Didn't you tell us a few minutes ago that it was a month or so after Ward was hurt that they put in a new drum?

A. After the coal ships. I didn't say a month, I said it might be a [521—439] month or five or six weeks, I don't remember the dates. It is the drum I am speaking of.

Q. The drum then worked all the time up to the time that the coal ships were all discharged when a new one was put in, another new drum was put in?

A. Another new drum was put in.

Q. Where was the flat in that drum, did you say the drum was too flat, what do you mean by that, you say the drum was too flat?

A. If you have got a pencil I will try and show you (the witness draws sketch of drum). There is where it was too flat, there, it wouldn't come down,

(Testimony of John Scott Muirhead.)

there is where it ought to have been like that (indicating on sketch making diagram and illustrating).

Q. It ought to have been in the way that you have shown. Now, let us get this exactly right. The drum, as I understand you, should have been constructed or made as the lines A' to B' are instead of in the way from A to B? A. Yes, sir.

Mr. STANLEY.—A to B represent the curved line and A' to B' representing the dotted line?

A. The dotted line to A and B.

Mr. DOUTHITT.—The dotted line is A' to B'?

A. This is the one here.

Q. Now, you have drawn correct, Mr. Muirhead, I don't want any mistake about it.

A. It is roughly drawn.

Q. We don't expect to have perfect tracings. You have drawn your drum, the manner in which it was, showing the line A to B, this down here and also you put in some dotted lines showing the mark A' to B', that is the manner in which you say it should have been done in the way from A' to B'?

A. Yes, sir.

A JUROR.—Mr. Muirhead, does that drum come here from New York or was it made locally?

A. I am not certain whether that drum was made in New York and was a *spare* that came with it or was made down in the Honolulu Iron Works.

[522—440]

Mr. DOUTHITT.—I was just getting to that in response to the question that was asked by Mr. Bailey. Don't you know, Mr. Muirhead, that that

(Testimony of John Scott Muirhead.)

was an A. W. Hunt and Company drum?

A. I don't care who made it, I don't know whether it was a Hunt drum or a Honolulu Iron Works drum.

Q. And the Hunt drum are made particularly with reference to the engine, those are the people according to whose plans and specifications that this coal-conveyor was constructed?

A. It is. Well, do you know that that drum had been over to the Iron Works and had been turned down previous?

Q. I am not asking you that.

A. You see, in regard to the Hunt make, it was made by these gentlemen and come with this cable, but that was turned down.

Q. What was turned down? A. The drum.

Q. By whom? A. The Honolulu Iron Works.

Q. But the cable was not turned down, was it, Mr. Muirhead? A. Oh, no.

Q. You mean, then, that that drum—what did they use it for? A. How do you mean?

Q. What do you mean by being turned down?

A. Take a lathe to the grooves where the wire previously cut it out and reduce it down to ordinary.

Q. Reduce it down to ordinary?

A. Yes, true it up.

Q. What part of the drum was reduced down by the lathe?

A. Right where that line is where the cable goes.

Q. It was hollowed out more, do you understand?

A. Give it to me and I will show you.

(Testimony of John Scott Muirhead.)

Q. Just a moment before we look at this. Was the drum hollowed out more?

A. Of course it was much more to true it up and get it back to its proper place as near as they possibly could.

Q. And that was done by means of a lathe?

A. Yes, sir. [523—441]

Q. In other words, when a shoulder is worn on a drum—when a shoulder is worn on a drum it is taken over to the Inter-Island shops or it may be taken down to the Honolulu Iron Works and then the other side of it is hollowed out and made a shoulder, is not that right?

A. No, sometimes they turn them both out, come right down there and reduce this here, it comes right around this mark here to true the whole business with the cable. Anyway, on one side it will cut the shoulder in and this top coil is likely to crowd over and when they come too short in here they won't slip down the same as that will.

Q. In other words when that drum first arrived you know that those drums are sent out here originally by the C. W. Hunt Company for the use of this conveyor? A. Yes, I believe so.

Q. And when the drum is sent out from the shops of the W. C. Hunt and Company and arrives here at the Inter-Island Steam Navigation Company's shop, the coal-conveyor, the drums are in good condition, are they not? A. Yes, sir.

Q. And fit for the purpose which is required of them, to wit, the cable is wound four times around

(Testimony of John Scott Muirhead.)

that drum, is it not? A. Yes, sir.

Q. That the drum is in good condition and the cable, but subsequently it wears down? ●

A. Yes, sir.

Q. But as it comes from the ship the drum is in good condition? A. Yes, sir.

Q. Now, Mr. Muirhead, let me ask you this: was the drum that was the new drum that was put in before the time that Ward was hurt, was that a new drum from the C. W. Hunt Company?

A. I don't quite grasp it. Do you mean that the drum that Mr. Ward put in—

Q. Yes.

A. The one that was there when the accident occurred.

Q. You testified here that there was a new drum put in, do [524—442] you remember that?

A. Yes.

Q. But you don't exactly remember the date?

A. Yes.

Q. Now, then, Mr. Muirhead, the question that I ask is this: Was the new drum that Ward put in before this accident, was that the new drum that had come out from the factories of the C. W. Hunt Company?

A. I believe it was an old drum we turned in the Honolulu Iron Works.

Q. You believe? A. Yes.

Q. Are you prepared to swear positively on this stand, Mr. Muirhead, that that was an old drum which had been returned from the Honolulu Iron

(Testimony of John Scott Muirhead.)

Works? A. I am not prepared to swear to it.

Q. You are not prepared to swear positively to the fact that it was not a new drum sent out from C. W. Hunt and Company, that was installed?

A. I am not prepared to swear to anything of the kind.

Q. Then, if it were for the sake of argument, if it were a new drum the cable would run smoothly over the drum, would it not?

A. It might and might not, I don't know for sure.

Q. Well, why don't you know?

A. Well, I don't know what the slot of the curver is that is in there, it might not.

Q. You don't know what slot or curve is in, what do you mean by that?

A. The curve which each rope comes around. If you are getting a flat curve there it wouldn't be any use, the cable would be bad for riding over it.

Q. I understand, but you were down there two or three times a day, every day once a day at all events, sometimes twice a day and sometimes three times a day. Now, I am asking you the possibility, I am asking you if a new drum was used, if a new drum sent out from the factories of C. W. Hunt Company, your cable would not revolve and run around on that drum without raising any friction or any difficulty around it? A. I believe it would. [525—443]

Q. You believe it would? A. Yes, sir.

Q. That is the experience of an engineer, your experience as an engineer of many years' standing?

A. Yes, sir.

(Testimony of John Scott Muirhead.)

A JUROR.—When those drums are sent to the Honolulu Iron Works to be trued up who gave instructions with regard to the pitch and the fall that was to be made in them?

A. Well, I have done that.

Q. Did you do all this work, or anyone else?

A. Believe Ward done it himself.

Q. But usually you gave your instructions?

A. If Ward would make a little template and I made one when we took one out.

Mr. DOUTHITT.—Mr. Muirhead, in order to make that work, in order to have your drum and have your cable running over your drum properly it has got to be perfectly smooth so as to give the cable the play, it cannot have any kinks or angles or projections in it, it has got to be something like this, does it not, right around? A. Yes, sir.

The further hearing of this case was continued until 8:30 o'clock, June 9th, 1914. [526—444]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

(Testimony of John Scott Muirhead.)

June 9th, 1914.

Cross-examination of JOHN SCOTT MUIRHEAD,
resumed.

Mr. DOUTHITT.—On which side of the drum was the cable wound?

A. Wound the side towards Ewa.

Q. You are positive of that, Mr. Muirhead?

A. Yes, sir, I am almost positive of it.

Q. Don't you know that the cable was on the right side of the drum towards Waikiki?

A. No, sir.

Q. What? A. No, sir.

Q. We will take this—the drum here, Mr. Muirhead?

A. That is the way the plant is running at the present time.

Q. Just take this piece of string, we will call this the cable. Now, illustrate to us the position in which that was wound around the drum.

Mr. STANLEY.—We object to it as not proper cross-examination, incompetent, irrelevant and immaterial.

Objection overruled. Exception.

Mr. DOUTHITT.—Please show the jury, Mr. Muirhead, how the [527—445] cable was wound around the drum at the time of this accident.

A. (Witness winds string around exhibit No. 5, used as a drum to illustrate, putting three turns around exhibit 5).

Q. That is the way it was, is it, Mr. Muirhead?

A. Yes.

(Testimony of John Scott Muirhead.)

Q. Now, don't you know, Mr. Muirhead, the way that you have placed that cable that it would be running on the right side instead of on the left side?

A. It is running on the side now as it appears on the drum, the way the drum is looking towards us from the place.

Q. Don't you know that the manner in which you have placed that cable, Mr. Muirhead, that the wire would be on the right side instead of the left side?

A. No, sir.

Mr. STANLEY.—I object to the question, the wire or rope.

Mr. DOUTHITT.—The cable, I mean.

Q. Don't you know the manner in which you have placed this string around exhibit 5— A. Yes.

Q. Would make the string operate on the right side of the cable instead of the left?

Mr. STANLEY.—The right side of the pulley, the exhibit.

Mr. DOUTHITT.—The drum, the drum rather than on the left?

A. Gentlemen—

Mr. DOUTHITT.—Answer my question.

Mr. STANLEY.—One moment, the witness has the right to answer the question as he sees fit.

The COURT.—Answer the question, if you can, first, and then make your demonstration afterwards.

Mr. DOUTHITT.—Answer the question.

A. The drum is running towards me, as it were, this here, it is running taking up that way and paying out that way.

(Testimony of John Scott Muirhead.)

Q. Don't you know the way you have fixed that cable on that drum or on the exhibit here was the very cause why it kept getting off and tangling up on the drum when the cable was first installed [528—446] down there, don't you know that?

A. No, sir.

Q. Now, let me show you and ask you if this is not the proper way to wind that cable on that drum?

Objected to. Objection sustained.

Q. I will ask you if this is not the proper way, Mr. Muirhead, the way that the cable was wound around the drum and the way it is to-day down there at that coal-conveyor, the way in which it was wound around the drum and the manner in which I will show you and ask you to refresh your recollection to that extent?

Objected to. Objection sustained.

Mr. DOUTHITT.—Is it not a fact, Mr. Muirhead, that the way that that cable was wound around the drum at the time of this accident was in the manner in which I will show you—that it went that way, but it came back this way—this way and that way, three, four, out this way, is not that the situation, you put it in at the place?

A. Gentlemen, didn't I show you that, didn't I leave this end out here (referring to string on exhibit 5), that end up to the corner of the pulley? I told you the drum ran towards me and the cable was taken up that way and paid out that way.

A JUROR.—Three turns and four turns.

Mr. DOUTHITT.—Now, wound around four times

(Testimony of John Scott Muirhead.)

like that, backward this way, don't you know that if that is on the drum, Mr. Muirhead—— A. Yes.

Q. And the drum is revolving towards the right, that all of these wire ropes or cables would go over towards the right-hand side of that drum?

Objected to as incompetent, irrelevant and immaterial and improper cross-examination.

(Last question read:)

Objection sustained to the last question as propounded. [529—447]

Mr. DOUTHITT.—That is an absolute reproduction in print of the engine that was used?

A. Yes.

Q. That is the C. W. Hunt & Company engine (showing book to witness)?

A. Yes.

Q. This, I take it, is the drum that you referred to? A. That is the drum, sir.

Mr. DOUTHITT.—I offer this book in evidence.

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. DOUTHITT.—With the drum moving in the direction towards the right and the cable travelling in a mauka direction or traveling in the same direction as the drum, Mr. Muirhead, I will ask you, Mr. Muirhead, I will ask you which side of the drum the cable which was wound around the drum four times would work, right or left, or did work?

Objected to as incompetent, irrelevant and immaterial and improper cross-examination.

(Testimony of John Scott Muirhead.)

The COURT.—Did you indicate the manner in which he has, himself, placed the cable on the drum?

Mr. DOUTHITT.—Yes, sir.

The COURT.—If Mr. Ward was under his direction and control and was directed by him to see that the cable and drum and everything was in proper running order and it developed on cross-examination that a certain drum was placed in there on the 6th of June or about the 6th of June, but that that drum was an old drum or taken out a month after the accident because it was too flat, that is a matter of cross-examination.

(Last question read.)

Objection overruled. Exception.

The COURT.—Can you answer that, Mr. Muirhead?

A. Beg pardon?

Q. Can you answer that question?

(Last question read.) [530—448]

A. I think I told you how it worked.

Q. Tell us again which side of the drum was the cable, as I have described it, traveling in the same direction as the drum, which side of the cable was on that drum?

Mr. STANLEY.—Which side did it work?

Mr. DOUTHITT.—Which side did it work?

Q. Now, which way did the cable work as the drum was going around?

A. I showed you already, sir.

Q. Which side of the drum?

A. I showed you already, I told you gentlemen

(Testimony of John Scott Muirhead.)

here it was running toward this way and paying out here.

The COURT.—Objection sustained. He may be able to answer it, but I do not understand the question.

Mr. DOUTHITT.—With reference to the drum here, Mr. Muirhead, with reference to the drum and with reference to the way in which the cable was wound around the drum at the time of the accident, which side of the drum was that cable working?

Mr. STANLEY.—Can you agree with me that the objection I have made to the examination of the witness with regard to the cable around the drum or the action of the cable around the drum will apply to all these questions?

Mr. DOUTHITT.—Yes.

The COURT.—The objection will apply to all this class of questions. Answer the question, Mr. Muirhead.

A. The drum is running toward me, the cable is running in there and paying out on that side there going out there. That is all I have got to say about it, sir.

Mr. DOUTHITT.—Do you mean to tell me, Mr. Muirhead, that you, the superintending engineer of the Inter-Island Steam Navigation Company, that you don't know which side the cable was working, right or left at the time of this accident?

A. I have answered your question already.

Q. Is that the only answer that you can give us?

A. Yes. [531—449]

(Testimony of John Scott Muirhead.)

Q. All right. How much was that cable worn as you have said?

A. I think I went through that yesterday.

Q. Yes, I know that, but let us go through it again today. A. It was slightly chafed on the outside.

Q. What do you mean by slightly chafed?

A. That is all I can explain it to you, just rough.

Q. Rough? A. Yes.

Q. And how much was it chafed, was it chafed a quarter of an inch or one-eighth of an inch or what?

A. No, no. What do you mean by a quarter of an inch or an eighth of an inch?

Q. Just exactly what I say, Mr. Muirhead.

A. Well, supposing you are chafing that on the outside reckoning that up there, what would you call it, one-eighth of an inch or a quarter?

Q. Well, I am asking you as a superintending engineer of the Inter-Island Steam Navigation Company?

A. I could make them understand but I don't think I could make you understand.

Q. No, I don't think you could, Mr. Muirhead.

A. It is slightly chafed on the outside, that is all I can say about it.

Q. By chafing you mean roughened?

A. Yes, roughened, and worn, slightly worn.

Q. Do you mean worn smooth or what?

Objected to as already asked and answered.

Mr. DOUTHITT.—Were any projections—were the wires sticking out in any way to make it rough?

A. Well, no, it was just rough by feeling on the

(Testimony of John Scott Muirhead.)

hands, you could feel it that way, and tell on your hands, it might be, but it didn't show unless you were feeling it.

Q. And that condition continued right up to the time that Ward was hurt? A. Yes, sir.

Q. And how long after Ward was hurt did that condition occur [532—450] or continue?

Objected to as improper cross-examination, incompetent, irrelevant and immaterial.

Objection sustained.

Q. When was the first time that you observed that roughened condition of the cable?

Objected to as already asked and answered.

Objection sustained.

Q. And you had occasion to observe the roughened condition of the cable every day, did you?

Objected to.

Mr. DOUTHITT.—I have not finished the question.

Q. And you had occasion to observe the roughened condition of the cable every day from the time you first discovered its condition up to the date of Ward's accident?

Objected to as already asked and answered and not proper cross-examination.

Objection sustained.

Q. Was the condition of the cable any worse at the time—the day that Ward was hurt, than the time when you first examined it?

A. Well, it was not perceptible to me.

Q. How is that?

(Testimony of John Scott Muirhead.)

A. It was not perceptible. I don't think there was any difference in the cable whatever.

Q. No difference in the cable whatever?

A. Not to my looking at it.

Q. Did you go down specially to the coal-conveyor for the purpose of looking at this cable?

A. No, sir, not specially to the coal-conveyor to look at that cable, to look at everything in general.

Q. When did you go down there to look at everything in general?

A. Every day I am down there, sir, and cast my eyes around the place once or twice.

Q. Now, if anything happened to the cable, Mr. Muirhead, [533—451] there was a special man by the name of Williamson, a rigger, who attended to the splicing and repairing of the cable, didn't he?

A. Yes, sir.

Q. What? A. Yes, there was a man there.

Redirect Examination of JOHN SCOTT MUIR-
HEAD.

Mr. STANLEY.—Mr. Muirhead, you say that after Ward's accident and within a month or six weeks thereafter, that a new drum was put in at the coal-conveyor, *but* whom was that drum put in?

A. By me, sir.

Q. By you personally? A. Yes, sir.

Q. And now, Mr. Muirhead, can you, by any means fix the approximate date on which that new drum was installed? A. I can.

Q. How? A. By looking up the books.

Q. Have you since you were on the stand yesterday

(Testimony of John Scott Muirhead.)

refreshed your recollection? A. I have, sir.

Q. And what have you learned?

A. I have learned the time I took it out and sent the other one to the Honolulu Iron Works.

Q. And when was that, Mr. Muirhead?

A. On July 20th I think it is.

Q. Of what year? A. 1912.

Q. Anything else? A. Previous to that—

Q. I am not asking you that, just answer my question. A. All right.

Q. Now, Mr. Muirhead, you were asked if it was not a fact that the drum that was installed by Mr. Ward was not a C. W. Hunt [534—452] & Company drum. I will ask you how many drums in all the Inter-Island Company received from C. Hunt & Company? A. Two.

Q. And when did they receive them?

A. They received them when the plant came.

Q. And that was about early in 1909, was it not?

A. About that.

Q. So it was finished in 1909?

A. I am not certain of the date when it arrived.

Q. Were those drums used?

A. Yes, sir, there was one put in for to work and that left one spare one.

Q. One spare one? A. Yes, sir.

Q. Now, after you had either discarded those drums or dispensed with their further use where did the Inter-Island Company get their drums from?

A. The Honolulu Iron Works, sir.

Q. What was the trouble, if any, Mr. Muirhead,

(Testimony of John Scott Muirhead.)

with the Hunt & Company drums?

A. Well, when they wore down to a groove the rope would not slip back to its proper place, it climbed and raised, I had to take them out and send them over to the Honolulu Iron Works to get them returned, to turn that part out and we found them that thin so they would not do any more, so I ordered new ones from the Honolulu Iron Works and made them much heavier in the body.

Q. Will you explain, Mr. Muirhead, to the jury what you mean by the drum of Hunt Brothers being too thin, if you can, by a diagram illustrate to the jury what you mean. Do it as carefully as you can, take your time.

A. (Witness illustrates with diagram.) That here you can make that much more thick.

Q. What do you mean by that here?

A. Where the wires go.

Q. Do you mean the space enclosed in these lines?

A. Yes, sir, about that.

Q. That is what you mean? A. Yes, sir.

Mr. STANLEY.—Showing on the diagram section of the illustration [535—453] marked A. B. C. D.

A. This here would look about the size of it originally.

Q. Which part? A. This part here.

Mr. STANLEY.—I mark it X, the portion shown on the diagram as the portion being shaded, that is the Hunt drum as it originally was?

A. Yes.

Q. Now, what did you do, you say it was too thin?

(Testimony of John Scott Muirhead.)

A. I got it made much thicker here about an inch, possibly, or more, right around the pattern so as to enable us to turn this place down and still keep the strain on.

Q. You added an inch on the diagram so as to straighten or increase the part marked X, is that right? A. That is right.

Q. Anything else you want to say?

A. That is all.

Mr. STANLEY.—I offer this in evidence and ask that it be as defendant's exhibit.

The COURT.—It may be received in evidence and marked Defendant's Exhibit 10.

Mr. STANLEY.—As I understand you then, Mr. Muirhead, as the cable worked on the drum from time to time a shoulder would form on this part marked X, the drum would have to be taken out and smoothed down? A. Smoothed down.

Q. To take away the shoulder? A. Yes, sir.

Q. You added this inch here in order to lengthen the life? A. The life of the drum.

Q. And when, Mr. Muirhead, was that improvement or change made in the drum?

A. In September, 1909.

Q. September, 1909. Now, how do you fix that date, Mr. Muirhead?

A. By referring to my books in the shop.

Q. Have you that book here? A. I have, sir.

Q. While we are examining that, Mr. Muirhead, I will ask you another question: From the time in September, 1909, when you ordered the Honolulu Iron

(Testimony of John Scott Muirhead.)

Works a drum to be changed as you [536—454] have described, what drums had been used or were used up to the time of Ward's accident on that coal-conveyor? A. Honolulu drums, sir.

Q. What do you mean by Honolulu drums?

A. Honolulu Iron Work's drums, made by them.

Q. From that time on did you use Hunt Company's drums?

A. After they got worn out they were discarded.

Q. From that time, from the time that you got the new drums from the Honolulu Iron Works, did you use Hunt Company's drums?

A. One minute please, those drums were made, we put in a new one, you understand, the spare one, and took that out and that was used up and then it was discarded, it was too thin, it was liable to break with us and we had them made all thicker there so that we would have a longer life for them to return them up as required.

Q. From the time that the Hunt Company, the original two that you got from the Hunt Company, from the time that they were discarded, what drums were you using prior to Ward's accident?

A. Made by the Honolulu Iron Works.

A JUROR.—Mr. Muirhead, can you recollect how long those two drums were in use?

A. Well, not a month or two, I could not, or a year perhaps, but they were discarded, then shortly afterwards, after that time in 1909, because they were not lasting long at all, they were cutting through and we had to get heavier ones made from the Honolulu Iron Works.

(Testimony of John Scott Muirhead.)

Q. When you say, Mr. Muirhead, the entry in your books of September 13th, 1909, are you referring to an entry Honolulu Iron Works, September 13th, 1909, number 501, coal-conveyor, I cast iron rope drum, an old one, to be one inch thicker in body?

A. Yes. I am refering to that drum we are speaking of now; that was the order at that time.

Q. You testified, Mr. Muirhead, before you wound this drum [537—455] that the cable would pay out in this direction?

A. That is going towards that end.

Q. That is going towards makai. And which do you call the right or left side of the drum, which is it?

A. I don't know how you stand there looking at the engine.

Q. That was Mr. Douthitt's question. Was it paid out right or left?

A. The juror would understand it better by seeing that this rope was running towards that end and this was coming in on this side up here.

Q. Where did this go when it got to the top of the coal-conveyor? A. This way.

Q. And this one here paying in the coal-conveyor and going away? A. It runs over here.

Q. It comes from the drum over the weight?

A. Then from the coal-conveyor down that weight.

Q. Where does that go to? A. Over that pulley.

Q. Then where does it go to?

A. It runs that way.

Mr. STANLEY.—It runs mauka? A. Yes.

Mr. STANLEY.—We offer this book in evidence.

The COURT.— It may be received in evidence and marked Defendant's Exhibit 11.

[Testimony of James A. Kennedy, for Defendant.]

Direct Examination of JAMES A. KENNEDY, called for the defendant, sworn.

The CLERK.—Your name, please?

A. My name, James A. Kennedy.

Mr. STANLEY.—Mr. Kennedy, where do you reside? A. Honolulu.

Q. And what is your occupation at present, Mr. Kennedy? [538—456]

A. I am with the Inter-Island Steam Navigation Company.

Q. In what capacity?

A. President and general manager.

Q. And how long have you held that position?

A. I think it was in 1902 I went there.

Q. As president and general manager of the company, Mr. Kennedy, what are your duties?

A. What is that?

Q. As president and general manager of that company what are your duties?

A. I have the superintendence or oversight over all the different departments of your company. Take, for instance, there is the transportation end of it, there is the ships, the ship chandlery, marine railway, coaling plant. I think that is about all.

Q. You say among other things under the operation of the company is the coal plant; do you remember, Mr. Kennedy, when that coal plant—by coal plant I take it that you mean coal-conveyor?

(Testimony of James Kennedy.)

A. That is the whole coal plant, yes, sir.

Q. When that was installed by your company?

A. Yes. You asked me if I remember when it was installed?

Q. Yes. A. Yes.

Q. About when was that?

A. As near as I can remember I was in New York in 1907 and placed the order. I think it was in November. It began coming out somewhere about December of 1908, I think, and it was finished somewhere about 1909.

Q. Now, Mr. Kennedy, it has been testified here that Mr. Ouderkirk put up the wood work of the coal-conveyor and that Mr. Ward put up the steel work on the conveyor?

A. We made an arrangement with Mr. Ouderkirk for to put up all the wood work, yes, and Mr. Ward put up all the mechanical arrangements, that is, the engines, towers, bridges and everything in connection with the coal plant.

Q. And under whose instructions?

A. After we got the plant, Mr. Ward was working in the shops, over in the shops, and [539—457] Mr.—I asked Mr. Muirhead if he would suggest anyone, if he knew of anyone who he thought would be capable of the erection and running of the plant.

Mr. DOUTHITT.—This is all hearsay.

Mr. STANLEY.—Under whose instruction was it, under whose instructions was Mr. Ward put in charge of the erection and superintendence of this steel work? A. Mr. Muirhead.

(Testimony of James Kennedy.)

Q. After consultation with you? A. Yes, sir.

Q. Now, Mr. Kennedy, after the plant was erected, what, if any, connection with the coal-conveyor had Mr. Ward?

A. After the coal plant was erected?

Q. Yes.

A. He was instructed that he was to take charge of the full running of that coal plant, that is, all the machineries and towers, of all the engines, there is two towers on the wharf, one tower in the coal-yard, and the trolley engine with the cable and pulleys and everything in connection with the mechanical appliances for running that coal plant.

Q. And was this his duty at all times or at special times?

A. That is when—only when steamers were coming in; that is, in advance it was his instructions that he would be notified, the shop would be notified when we got cable when the steamers would be in or about the time they would be in and his orders were to go down to the coal plant and go over everything to see that everything was in good running order so as to be ready at the steamer so as there would be no hitch or anything of that kind when a steamer come in; it was his orders to take charge of the unloading of that vessel so far as the coal plant is concerned and see that everything was in working order; then with the steamer, with the coal of course there was stevedores, to go down once in awhile and see that they were all working to the best advantage for the interests of the company, and then the ship had [540—

(Testimony of James Kennedy.)

458] to be shifted backward and forward for the trimming of the ship, to get the vessel moved so as to start, backward and forward and arrange for the moving of the vessels backward and forward.

Q. Were any instructions ever given by you or to your knowledge by any officer of the company to Mr. Ward that his duties were limited either partially or in the main to the coal ship that was discharging?

A. No, to the coal plant to the trolley work, the work above, looking after the ship that is incidental. Of course, another thing that he was to see this being a new appliance, new arrangement, the grabs going down in a ship to look out and see that we had not claims coming in from the ship for damage to the ship.

Q. In case of repairs being necessary to the coal-conveyor on who was that duty placed, the duty of making such repairs and seeing that the plant was in proper order put by the company?

A. Mr. Ward.

Q. Mr. Ward? A. Yes, sir.

Q. State whether or not when a coal ship was in whether Mr. Ward had any luna or foreman under him?

A. When Mr. Ward was not there, Mr. Akina, Akina, I have forgotten his exact name, he had charge of the running of that thing when Mr. Ward was not there. When Mr. Ward come down Mr. Ward assumed all the responsibility there, Mr. Akina under him.

Q. Mr. Akina under him?

(Testimony of James Kennedy.)

A. Under him, yes.

Q. Now, Mr. Kennedy, what connection, if any—
I will ask you if you know Mr. Gedge?

A. What is that?

Q. Mr. Gedge?

A. Yes. You were perhaps speaking too loud.

Q. Do you know Mr. Gedge? A. Yes.

Q. Mr. Norman E. Gedge? A. Yes.

Q. He is the secretary and treasurer of the Inter-Island Company?

A. Secretary and treasurer of the Inter-Island
[541—459] Steam Navigation Company.

Q. What duty, if any, has he, Mr. Kennedy, in connection with the coal-conveyor?

A. I had him to go down first when steamers came in so as he would meet the captain and make arrangements in connection with the ship and notify them about our plans in connection with our wharfage charges and get things started, that was as far as getting entered at the custom-house and other things. He was there to see what was going on, to go down there and to report to me just what was going on, to keep me posted of things that were going.

Q. Had he any authority from the company, Mr. Kennedy, to direct what repairs should be made?

A. What is that?

Q. Had he any authority from the company or from yourself to direct what repairs should be made?

Objected to as incompetent, irrelevant, immaterial and leading.

Objection sustained.

(Testimony of James Kennedy.)

Q. What if anything, Mr. Kennedy, had Mr. Gedge, what authority, if any, Mr. Kennedy, had Mr. Gedge with regard to repairs being made?

A. Absolutely none.

A JUROR.—Mr. Kennedy, did Mr. Muirhead have anything to do with the repairs being made down there?

A. It was all made by Mr. Ward, whatever Mr. Ward wanted he could make, send his orders in and they were all executed.

Q. Mr. Muirhead didn't have anything to do with that?

A. Mr. Muirhead had the whole thing, it was in his hands. If he sent orders up to the shop they were filled, if he sent orders to the Irons Works they were filled, they were O. K.'d and passed in.

Q. Was Mr. Ward responsible to Mr. Muirhead for the condition of that conveyor at all times?

A. He was sent down by Mr. Muirhead to take full charge of the coal-conveyor and there was [542—460] nobody to bother with him.

Q. Mr. Muirhead, then, was not responsible for any of the conditions that prevailed down there?

A. No, no, no, Mr. Muirhead was the man who was put there to be entirely responsible.

Q. Who?

A. Mr. Muirhead—at least Mr. Ward.

Q. Then Mr. Muirhead had nothing to do with the coal-conveyor?

A. No, he had nothing to do with the coal-conveyor, not at that time.

(Testimony of James Kennedy.)

Mr. STANLEY.—What?

A. Not at that time, he had put Mr. Ward alone. Not at that time, he had after Mr. Ward left. When Mr. Ward was off. He was away for some months.

Mr. STANLEY.—And do you know whether or not Mr. Muirhead visited the coal-conveyor from time to time?

A. I don't think he—I didn't see him, very seldom down there, very seldom.

Mr. STANLEY.—Now Mr. Muirhead I will ask you if as a matter of fact you visited the coal-conveyor from time to time?

A. I was down there from twice to three or four times a day, twice at least, sometimes oftener, depending on what was going on.

Q. And I will ask you, Mr. Kennedy, whether or not you have ever seen the cable off the pulleys or off the track? A. Quite frequently.

Q. When you say quite frequently what do you mean?

A. In fact I don't know that I have ever seen a ship in there without the cars coming off. They come off almost every time, we always look for them coming off at any time.

Q. I see, and at what parts of the coal-conveyor have you seen the cable off?

A. I have seen it come off at all points, at the both extreme ends, the curves, see it come off on the straights.

Q. By the straight what do you mean?

A. That is on the straight—there along the

(Testimony of James Kennedy.)

straight line not at the curve but [543—461] at the straight line.

Q. That is between the different curves?

A. Between the different curves, yes.

Q. And you say you have seen it at all the curves?

A. I have seen the car off at all the curves.

Q. Does that include the makai curve?

A. Yes, all sides, makai side and every side.

Q. And how often have you seen it, Mr. Kennedy, off the makai curve?

A. Oh, I could not tell you, I could not keep track of it.

Q. Was it seldom or frequently?

A. It was frequently, quite a number of times.

A JUROR.—When you refer to it coming off on the straight-away track do you mean the cars coming off? A. The cars coming off, yes.

Q. And the car is attached to the cable—how is the car attached to the cable, Mr. Kennedy?

A. There is a shoe there that the rope runs in and it is screwed down to catch it.

Q. And when the car would come off the track with the cable attached to it where would the cable come? A. The cable would come with it.

Q. Is it the car that would come off the curve or the cable? A. On the straight?

Q. On the curve?

A. The car comes off and brings the cable with it.

Q. The car comes off and brings the cable?

A. I don't know which it is, but it comes off, they come off, I don't know which way it is.

(Testimony of James Kennedy.)

Q. They both come off together?

A. They both come off together. [544—462]

Mr. STANLEY.—I will ask you what has been the condition at the place where the cable has come off the pulleys or the track?

A. Just repeat that again.

Q. What has been the condition where the cable has come off either the pulleys or the straight-away track? A. The condition?

Q. Yes. A. I don't understand you.

Q. I don't want to lead you. A. No.

Q. Describe what you saw, what you have seen on these occasions when you have seen the cable off the pulleys or off the straight-away track.

A. Well, I have seen it in some cases where there were double cars, cars in front of it, but I have seen it when there were obstructions on the track and I have seen it without these. I have seen it come off without anything being in the way.

Q. Now, Mr. Kennedy, I will ask you if loaded cars—if you have ever seen loaded cars going on the Ewa track? A. On the Ewa track.

Q. The towers being on the Waikiki side?

A. Certainly.

Q. Now, under what conditions—this was prior to Mr. Ward's accident; under what conditions would loaded cars be sent up on the Ewa track?

A. They would simply go along on that track the same as they would go on the other one.

Q. What operation would the company be per-

(Testimony of James Kennedy.)

forming when they would send loaded cars upon the Ewa track?

A. We have chutes on this side when a vessel is unloading it and when our steamers would come in or get coal at this other end. Of course the coal has got to go away around and be unloaded to get coal here.

Q. You would have a foreign ship discharging coal here? A. Yes, sir.

Q. When you refer to our steamers what do you mean?

A. Inter-Island [545—463] steamers.

Q. Would they be loading or discharging coal?

A. They would be taking the coal on.

Q. Taking the coal on? A. Yes, sir.

Q. And under the circumstances where would the coal come from with which those ships of yours would be loaded?

A. Well, we were picking it up in the yard, it was a different kind of coal from which the ship was discharging.

Q. You picked it up in the coal-yard?

A. Yes, sir.

Q. And where would the cars be loaded?

A. Over in the yard at the trestle work.

Q. In the coal-yard? A. In the coal-yard.

Q. And the only way they could go they would be sent down the Ewa track? A. Yes, sir.

Q. And around to your steamer which would be ahead of the foreign ship? A. Yes, sir.

A JUROR.—Mr. Kennedy, wouldn't the same coal

(Testimony of James Kennedy.)

sometimes be taken on? A. Oh, yes.

Q. Discharged by the towers?

A. Oh, yes, the coal coming out of the steamer would often go into our own ships, also, it is just a question what kind of coal we want our own ships to take.

Q. When the cars would go off the track on the same line of track the cable went off with it?

A. Yes.

Q. Would they have to disconnect the car with the cable to get the cable back onto the pulleys again, or would you take and lift your box?

A. That was the orders invariably when a car got off. I didn't stay around because I thought the men were enough to get the car on and I didn't like to be around and I could only clear out so as to leave them alone to do it themselves. Sometimes a fellow standing around there makes them nervous and excited and I always cleared out.

Q. You don't know if the box was lifted?

A. The box has [546—464] got to be lifted.

Mr. STANLEY.—The juror is asking you what you know. You don't know anything about it?

A. No, I don't know about it at all.

A JUROR.—You don't know then if they had to lift the box then to get the cable on if a car run off on the straight track?

A. I know this, that I have been around there at the beginning and heard Ward send the men immediately to hoist the box. I know that much and I cleared out, but that is about the first thing that is

(Testimony of James Kennedy.)

done to get the box up by Mr. Ward's own orders.

Mr. STANLEY.—You have been present when you heard Mr. Ward give those orders?

A. Yes, sir.

Q. But as to what orders were given Mr. Ward you don't know personally? A. No.

A JUROR.—That is on the Ewa track I am asking about, the Ewa track, the straight line of track, you would have to lift that box to get the cable on the track when it is off the Ewa side. Have you ever seen that, how it was done? A. No.

A JUROR.—He stated that he had seen the cable off the straight track. I wanted to know if he had to raise that box to get that cable on again?

A. What is that?

Mr. STANLEY.—Do you know, Mr. Kennedy?

A JUROR.—You stated that cars were off the straight portion of the track and the cable goes off with them; do you have to lift this box to put that cable back on the track?

A. On the straight track?

Q. On the straight track? A. I don't know.

Q. On the Ewa side?

A. I don't know really, whether you would have to do it on the straight track or not.

Q. You don't know? A. No.

Mr. STANLEY.—Now, Mr. Kennedy, I will ask you if at any time [547—465] you have been present when an experiment has been made to show what the effect has been at the makai end of the coal-conveyor of lifting the weight; of stopping the

(Testimony of James Kennedy.)

engine, lifting the weight and taking the grips off the cars?

A. Well, the cable will fall flat down between the rollers, between the cars right along, all the way along.

Q. Up to what point?

A. Up to the point to as far as there was this gang-way and even along this way along the waterfront.

Q. Prior to that being done, prior to the engine being stopped and the weight lifted and the grips being taken off what was the condition of the cable as to being slack or taut? A. Taut.

Q. And within what space of time, Mr. Kennedy, after these various operations have been performed would you see the cable slacking onto the track?

A. The moment they begin to hoist the box it shows.

Q. Was it gradually?

A. Oh, it begins just gradually until the box comes up the full length.

Q. And within approximately what space of time would you find the cable sagging on the ties between the rollers? A. What is that?

Q. Within approximately what space of time would you see the cable sagging on the ties?

A. From what point?

Q. Say the makai side?

A. Yes, but from where are you going to begin the time from until you see the rope sagging?

Q. From the time the order has been given to stop the engine, to lift the weight?

(Testimony of James Kennedy.)

A. Oh, I don't suppose more than a couple of minutes.

Q. Are you familiar, Mr. Kennedy, with the operations going on on the waterfront in the way of tallying coal and sugar and so forth on the waterfront of Honolulu? A. Yes, sir.

Q. Assuming, Mr. Kennedy, that Mr. Ward is injured to such [548—466] an extent that he has—that he walks on crutches, that his sight and hearing are affected to some extent, but he is capable of reading ordinary receipts like these I hand you, Plaintiff's Exhibits "B" and "C," without difficulty?

A. I don't catch—

Q. I have not finished yet. And assuming that his hearing is affected to some extent, does not prevent him from hearing ordinary conversation and that he is able to sit down and with those exceptions is practically all right; do you know whether Mr. Ward would be capable of doing the work as a tallier of sugar or coal or anything of that kind on the wharf?

A. Yes, sir.

Q. Do you know of any other position that Mr. Ward could occupy?

A. Oh, he could work in a machine-shop, that is, as far as keeping time checks and having a sort of half supervision over the men at work.

Q. How about the coal-yard?

A. Yes, I could give him a position in the coal-yard as coal-weigher.

Q. Now, what wages, Mr. Kennedy, if you know, do these talliers of sugar et cetera and other things

(Testimony of James Kennedy.)

command in this port?

A. I believe four dollars a day is what the sugar talliers get.

Q. And what wages are paid in the coal-yard of your company?

A. Coal-weighters from twenty-one to thirty-five dollars a week.

A JUROR.—Do you pay your talliers by the month or day? A. The week.

Q. Work or no work, they are paid?

A. Yes, they are paid for the week and paid for overtime Sundays or a holiday.

Q. A time and a half for overtime?

A. Yes, sir; it is more than that. [549—467]

Cross-examination of JAMES A. KENNEDY.

Mr. DOUTHITT.—You were not here at the time that this accident occurred, Mr. Kennedy?

A. Which accident?

Q. To Ward?

A. I was not here when Ward got hurt, no, I was in Europe, I believe, on that date.

Q. And had been away for how long?

A. I think in May sometime, the middle of May of that year, and got back about August, sometime in August. Hold on, that is another time. When did this occur; what year was it, was it 1912—Ah, yes, that was the time I was away in Europe.

Q. Before that time, Mr. Kennedy, you were down at the coal-conveyor, you say, three or four times a day?

A. I said twice a day, sometimes three times.

(Testimony of James Kennedy.)

Q. And sometimes four times?

A. Yes, sir; and sometimes more than that.

Q. Ward was the foreman in charge?

A. Yes, he was the man in charge of the coal plant, yes.

Q. Akina was a luna down there, wasn't he?

A. He was under Ward, yes.

Q. And he had men under him? A. What?

Q. Akina had men under him?

A. He had, yes, that is he had—of course, because when Ward was up in the shop Mr. Akina was there, when Ward was not there Akina had charge of the men.

Q. Had charge of the men? A. Of the men.

Q. And Akina had directed these men when Ward was there, directed the men about the coal-conveyor, didn't he? A. I don't know.

Q. How is that?

A. No, not to my knowledge.

Q. Well, what was Akina doing then?

A. What was he doing? [550—468]

Q. Yes?

A. He was looking after the men, looking after the cars, getting coal out, seeing everything was kept moving.

Q. Well, Akina, then he was the boss or luna of the coal-conveyor, directing these men?

A. Not unless—no, George Ward had full charge when he was down there.

Q. I understand, but when George was down below watching the grip so that it did not injure the skin

(Testimony of James Kennedy.)

of the ship, Akina was directing the operations of the coal-conveyor, was he not?

A. I don't know, I don't think so, I don't know

Q. Well, what was he doing, Mr. Kennedy?

A. He was working.

Q. Don't you know that he was paid as luna or boss over the gang of men on the top of this coal-conveyor? A. Yes, he had other work as well.

Q. I know, he did, but he saw that the coal was being taken out of the hoppers and directed the men on top of the coal-conveyor, didn't he?

A. They didn't need any direction, the men were all stationed and they had their own duties to perform.

Q. Ward was down aboard the ship, was he?

A. Once in awhile he was.

Q. Don't you know, Mr. Kennedy, that Ward's principal duty was aboard the ship to superintend the discharge of the coal from the hold of the vessel?

A. Far from it.

Q. Far from it? A. Yes, far from it.

Q. And his work, then, was principally where, on top of the coal-conveyor or on the ship?

A. He was not weigher either place, you asked if Mr. Ward was a weigher on the coal plant on the ship.

Q. I didn't ask you about a weigher.

A. Not quite so loud, the echo seems to be back of it.

Q. Ward, then, was practically where, on this coal-conveyor? [551—469]

(Testimony of James Kennedy.)

A. All over the coal-conveyor.

Q. All over the coal-conveyor? A. Yes.

Q. And Akina was up on this coal-conveyor, too?

A. Yes.

Q. He didn't go down in the ship, did he?

A. I don't know if he did.

Q. You were down there every day, were you not?

A. Yes, but he might not go down when I was there.

Q. How is that?

A. He wouldn't go down there when I was there, possibly he might be.

Q. But you have never seen Akina go down in the ship?

A. I could not recollect just now; I cannot place him; he may have been, but I cannot place him in my mind just now.

Q. But, so far as your observation was concerned, and you went down there, as I understand, every day— A. Yes.

Q. And sometimes as many as three to four times a day? A. Yes.

Q. When coal ships were in and you had never seen Akina leave the top of the coal-conveyor and go down into the hold of the ship?

A. Not that I remember. I have seen him all over the coal plant, but I cannot say that I have seen him down on the ship.

Q. And while Ward was down in the ship, Akina directed the operations up on the top of the coal-conveyor, didn't he?

(Testimony of James Kennedy.)

A. They were moving along without any direction.

Q. How is that?

A. They were running along, if anything happened he would call Mr. Ward.

Q. If anything happened he would call Mr. Ward?

A. Yes, if Mr. Ward—

Q. And there was a necessity—

Mr. STANLEY.—What were you saying, Mr. Kennedy, when you were interrupted?

A. I don't remember.

Q. You were saying, if Mr. Ward when you were interrupted, and what were you going to say?

A. It will come back to me perhaps, I don't remember now. [552—470]

Mr. DOUTHITT.—And then there was no necessity while the coal-conveyor was in operation, Mr. Kennedy, for anybody giving any directions on top of the conveyor?

A. Not when everything was working all right.

Q. The men at their different positions on the coal-conveyor? A. Yes, sir.

Q. And work went along? A. Yes, sir.

Q. And no necessity for getting any orders by anyone?

A. No, not when things were going all right, certainly not.

Q. And it was only a matter, then, as I understand you, of seeing that these hoppers were working and that the coal was being carried in towards the coal-yard and that the empties were returning in the usual course of business?

(Testimony of James Kennedy.)

A. I did not catch that.

Q. Then it was only a matter, Mr. Kennedy, of seeing that the men, I mean on the top of the coal-conveyor, of seeing that the hoppers were being discharged of their coal and that the coal-cars were being conveyed over to the coal-yard and the empties returning? A. Yes, sir, practically.

Q. In order that the work should go on?

A. Go on smoothly.

Q. That was all that was necessary to be done up there? A. Yes, sir.

Q. And these men undertook this business because they were employed for that purpose?

A. Yes, sir.

Q. And when the coal ship was not in Akina was the one that had full charge of the coal plant?

A. Well, he had the run of it, yes.

Q. Well, now, Mr. Muirhead didn't have anything to do with the coal plant, did he?

A. Well, of course, he had the general—he was—he appointed Mr. Ward and I suppose he took a general oversight over it.

Q. You suppose so. Did you ever see him down there at [553—471] that coal-conveyor?

A. Oh, I have seen him, yes.

Q. Didn't you testify on your direct examination that you had never seen him down there at that coal-conveyor?

A. No, I didn't say that.

Mr. STANLEY.—One moment; I object to that.

Objection sustained.

(Testimony of James Kennedy.)

Mr. DOUTHITT.—Did you ever see Mr. Muirhead down there during the unloading of coal vessels?

A. Oh, I have seen him down there. I have not seen him up on the plant, but I have seen him down below and I have seen him around the marine railway and around that way. I have seen him up on the platform, but not often.

Q. It is a matter of very rare occurrence that you have seen Mr. Muirhead down there at that coal-conveyor while coal-ships were in?

A. I could not say that. When I go down I don't stay. I simply go down and if I find everything going all right I simply go right back; I don't stay around there.

Q. But during the times that you were there. I understand that you were there sometimes four or five times a day?

A. Of course, you will soon have it up a great deal more.

Q. No, I am quoting you exactly what you said. Were you not down there four or five times a day sometimes?

A. Oh, I may have been down as many as that.

Q. And you were down there during the day three or four times or two or three times, were you not?

A. Well, the question is when?

Q. During the time the coal boats were being discharged of coal?

A. Not so much then as at other times. Sometimes more at other times, because Mr. Gedge was

(Testimony of James Kennedy.)

around there and reporting to me every hour what goes on.

Q. Mr. Gedge is there and reports to you every hour what goes on?

A. He goes down and he gets statistics of the amount of coal coming out and he lets me know. [554—472]

Q. What was Gedge doing down there?

A. He was just keeping tally, watching the coal; he was not there all the time, either; he was just down backward and forward at other times than myself.

Q. Just taking the—

A. The record.

Q. The record of the work as it was going on?

A. Report of the work as it was going on.

Mr. STANLEY.—Louder.

A. He would make report of the number of tons that was coming out of the vessel and sometimes there would be a notice that the coal-car was off the track or something was the reason for not having so much that hour as the hour before.

Mr. DOUTHITT.—He was down there to tally the coal, to take account or record of the coal as it was taken from the coal-ship and dumped in the coal-yard?

A. No, he simply made a memorandum from the coal-weigher's book, by weight and we tried to get them hourly records.

Q. That was merely in a clerical capacity that he

(Testimony of James Kennedy.)

was there? A. Yes, sir.

Q. Nothing else? A. That is about all.

Q. The merest clerk up there in the office of the Inter-Island Steam Navigation Company, Mr. Kennedy, could have gone down there and done the same work as Mr. Gedge? A. Oh, yes, just the same.

Q. You had delegated this clerical duty to the secretary and treasurer of the Inter-Island Steam Navigation Company?

A. He goes down there, he went to different places.

Q. Did you delegate that duty to him?

A. Delegated the same as he has all the other places. He has that understanding that he is to go around and report.

Q. I am asking you about this particular coal-conveyor? A. Yes. [555—473]

Q. Now, you sent the secretary and treasurer of the company down to the coal-conveyor for the purpose of checking coal?

A. Not for checking coal at all. No, he was to go down instead of my going down. He would go down to find out how the thing was progressing.

Q. If you were not there who would he report to?

A. If I was not there he would report to nobody.

Q. To no one? A. No.

Q. You were the only one that he was to report to? A. Yes.

Q. Now, it was a very rare occurrence, so far as your observation went, Mr. Kennedy, that you saw Mr. Muirhead down there at that coal-conveyor

(Testimony of James Kennedy.)

while you were there?

A. Well, it was around that way, yes, but he was not so often there, that is I didn't see him so often as I was down there myself.

Q. And it was very rare as I understand, even when you were down?

A. Rare, it is just a question of what rare means.

Q. It was not every day, was it?

A. Well, some days I didn't see him, other days, yes.

Q. It might go a week when you would not see him there? A. Not when a ship was in.

Q. I thought you said a moment ago that he was not in the habit of going down there when a ship was in? A. I didn't say that.

Q. Were you in the habit of going down there when a ship was in? A. Yes.

Q. But you didn't see him there when a ship was in?

A. Oh, yes, I have seen him there when a ship was in.

Q. You have never seen him on top of the coal-conveyor, did you when a ship was in?

A. I don't know whether it was when a ship was in or was not in, because I was taking no special record of the thing.

Q. Muirhead's business was up there in the shops of the company [556—474] on Queen Street and River Street, wasn't it, didn't his duties call him there?

A. That is his office, but I have gone oftener over

(Testimony of James Kennedy.)

there and not found him there than perhaps down at the ship, down at the coal-yard.

Q. You have testified here, Mr. Kennedy, that Ward—that that entire operation of that coal-conveyor had been given over to Ward?

A. So it was, yes.

Q. Now, will you please tell us in the absence of anything wrong down there, why it was that Mr. Muirhead, who had nothing to do with the running of that coal-conveyor would be down there?

A. Down there to see what was going on.

Q. Just from mere idle curiosity?

A. Just the same as he would go around the steamers to find out there himself, to keep himself posted.

Q. Mr. Kennedy, what was there to be posted about if Mr. Gedge was there and Mr. Ward was the foreman in charge of the entire work?

A. Mr. Gedge was not reporting to Mr. Muirhead, he was reporting to me.

Q. What is that? Gedge was reporting to you?

A. Yes. Muirhead never came in and reported to me at all, that is, he was doing it for his own satisfaction.

Q. Who did Ward report to?

A. To Mr. Muirhead.

Q. To Mr. Muirhead? A. Yes.

Q. Well, then, how can you explain the fact that if his duties were up there in the shops of the Inter-Island Company and if Mr. Muirhead had nothing to do with the running of this conveyor, why it was that Muirhead was down there on the conveyor?

(Testimony of James Kennedy.)

Objected to. Question withdrawn.

Mr. DOUTHITT.—Mr. Muirhead, while coal-boats were in had delegated, as I understand, full authority over the coal-plant to Mr. Ward?

A. Mr. Ward had full charge of the coal-plant. [557—475]

Q. In pursuance of your instructions?

A. Well, it was mutual understanding between us, that was with my consent and approval, yes.

Q. With your consent?

A. My consent and approval, yes.

Q. I understand, but you were the guiding spirit, we will say, down there; you were the president and general manager of the company and Mr. Muirhead would obey your instructions?

A. Oh, I suppose, if I had told him to appoint somebody else he would have done it.

Q. He would have done it? A. Yes.

Q. And it was in pursuance of the mutual understanding between you and Mr. Muirhead that Ward, while coal-boats were in, had the sole and exclusive charge of the coal-conveyor?

A. Yes, of all mechanical appliances about that coal-conveyor.

Q. The mechanical appliances on the coal-conveyor? A. Yes.

Q. Is that all that he has charge of.

A. I don't know just what you mean by that.

Q. You say that he has charge of the mechanical appliances of the coal-conveyor? A. Yes.

Mr. SUTTON.—He testified that he had charge

(Testimony of James Kennedy.)

of the entire coal-conveyor and mechanical appliances.

Mr. DOUTHITT.—At any time there were any repairs or drums put in down there by Mr. Ward, that fact was reported to Mr. Muirhead, was it?

A. That I don't know.

Q. You don't know? A. No.

Q. Have you ever seen that cable come off a straight track? A. I have seen the car come off.

Q. The car come off? A. Yes, sir.

Q. Due to what?

A. That is what I don't know.

Q. You don't know?

A. I don't know the reason why. [558—476]

Q. You don't know the reason why? A. No.

Q. These tracks and the whole conveyor were built pursuant to the plans and specifications of the C. W. Hunt Company of New York, were they not?

A. I presume so.

Q. Don't you know, Mr. Kennedy?

A. Mr. Ward got the plans and specifications and put that thing up and he put it all up himself.

Q. Didn't you order it yourself?

A. I ordered the plant made, yes.

Q. You ordered the plant made? A. Yes.

Q. And you ordered it made by the C. W. Hunt Company of New York? A. Yes.

Q. And the whole plant was constructed according to the plans and specifications as sent to you, upon the specifications and the plans sent?

A. I presume so, I didn't look it over. Mr. Ward

(Testimony of James Kennedy.)

had full authority to go ahead and put that up and as a practical man I had confidence in his ability to do it.

Q. He did put it up, too, didn't he?

A. Evidently.

Q. And there was never any objection made so far as this conveyor is concerned, that it was not according to the plans and specifications, was there?

A. No.

Q. You don't know what made the car come off the track on a straight track, do you?

A. Oh, there might be several reasons for it.

Q. Might be, but do you know?

A. No, I don't; I cannot tell you the reason.

Q. And when was it that you saw those cars come off a straight track? A. Oh, I don't remember.

Q. Were they loaded or unloaded?

A. I have seen them loaded and unloaded.

Q. Both? A. Yes, sir.

Q. Was it a very common occurrence to see the cars come off [559—477] the track while it was running on a straight track?

A. Yes, it was, but they didn't so often come off by a long way of the straight track as they did off the curve; they more frequently come off the curve.

Q. Don't you know that the track on this coal-conveyor, Mr. Kennedy, was so constructed according to the patent of the C. W. Hunt Company, the flanges of the wheel on the tracks that the cars would run just the same on the curve as it would on the track, don't you know that?

(Testimony of James Kennedy.)

A. I presume that is so.

Q. Don't you know that is a fact?

A. I don't know that it is a fact.

Q. Well, you received the catalogues, plans and specifications sent you by the C. W. Hunt Company?

A. Yes, sir, I received the plans and specifications.

Q. And those plans and specifications and catalogues sent by the C. W. Hunt Company along with the plans and specifications showed, did they not, that the cars could be operated upon a curve just the same as it could on a straight track, in pursuance of an invention of the C. W. Hunt Company?

A. No, I don't know that.

Q. You don't know that? A. No.

Q. Don't you know, Mr. Kennedy, that they are protected from coming off the curve by means of a flange in the track itself on the outer circumference and a flange on the inside of the wheels or on the car as it goes over?

A. Which is that; I didn't catch that?

Q. Don't you know, Mr. Kennedy, didn't you know at the time that these cars were prevented and the catalogues show and the plans and specifications show and the construction of the tracks show that the cars were prevented from coming off the circular head of the coal-conveyor by means of the construction of the track, the plans being on the outer circumference of the [560—478] track and the wheels instead of riding on the rail would ride on the flange, didn't you know that?

Objected to as incompetent, irrelevant and imma-

(Testimony of James Kennedy.)

terial and not proper cross-examination.

Mr. DOUTHITT.—The times that you say that you saw the cars off the track how many cars were running around? A. Running around?

Q. Yes. A. I don't know, I could not tell you.

Q. How many cars did you see at the circular head?

A. I didn't keep any tally, I could not say how many.

Q. You don't know whether there were two or three cars bunched up there?

A. No, I have seen cars bunched up there.

Q. Did you see the cable leave or the cars leave the track when there were two or three cars bunched up?

A. I have not seen it at that time; I have seen them when they were off; I have not seen them coming off.

Q. And as a matter of fact you have never seen the cable leave this makai end, have you?

A. I have seen it when it was off.

Q. When was that?

A. I could not tell you the date; I was not taking a note specially of any of these things. These were things I speak of, occurrences and I made no note. They were things of frequent occurrence.

Q. Was it a frequent occurrence, Mr. Kennedy, to have that cable come off on the makai end?

A. It came off there as frequently as any other place.

Q. Don't you know it came off in your coal-yard

(Testimony of James Kennedy.)

due to the falling upon top of the tracks of lumps of coal?

A. I knew it came off on the coal-yard and all over.

Q. That is the place where it frequently came off?

A. Where?

Q. In the coal-yard.

A. I don't know. [561—479]

Q. How many times have you seen that cable off there at the makai end?

A. I cannot tell you, I didn't make a note of the times. It has been running now for five years. I made no note of it. I could not tell you.

Q. How long would the cable be off before it was replaced at that end? A. Oh, I could not tell you.

Q. Have you any record of the installation of new cables? A. No.

Objected to as not proper cross-examination. Objection sustained.

Motion to strike the answer. Motion granted.

Mr. DOUTHITT.—Mr. Kennedy, have you not as a matter of fact observed that on this coal-conveyor when the engine is stopped and the cable is at rest, have you not seen the sag between the pulleys, is there not a perfectly natural thing to be a sag between the rollers?

A. I have never seen it, not when the cars were moving or the thing is standing still unless the box or counterbalance is lifted up.

Q. Have you ever seen—did you ever know of a wire rope or anything between two points which did

(Testimony of James Kennedy.)

not sag in the middle?

A. That depends upon what you mean by sag, there is a natural and certain amount, that is all.

Q. A certain amount of sag?

A. Between the pulleys, yes.

Q. A sag down between the rollers?

A. Slightly, yes.

Q. Then there was as you observed, there was a sag between rollers?

A. Well, it is not taut, no, there is a tremendous pull if those cars are pulling the rope or the rope is pulling the cars there is a difference, if that is what you mean by a sag.

Q. That is just exactly what I mean by a sag. You know what I mean by a sag. For example you can look right out there and see the telephone wires, that is what I mean by a sag?

A. Yes, but then they were hitched to the other pole and they [562—480] were loose around. There would be a sag too if they were down near the ground.

Q. How is that?

A. It would be sag, too, if it was down, near the ground.

Q. Of course there would be a sag. There was a sag between pulleys and necessarily had to be a sag as it went over like that between the rollers whether you lifted the box or whether you didn't lift the box, is not that a fact, is not that a physical fact?

A. It is a fact that there is a slight sag but of course there is—it is absolutely true that there is a

(Testimony of James Kennedy.)

slight sag according to the amount of tension on the wire you are putting, the greater tension on that and the sag is less; if you let go that tension the thing will drop down as far as it will go.

Q. Of course, that is exactly it, when you took the tension off you could see the sag between rollers?

A. The tension, that is when you lift the box up.

Q. No. A. Which tension?

Q. When the cable was not being used, when it was not conveying the cars along on the track?

A. A very slight grip?

Q. Ungripped? A. On the grip?

Q. Ungripped?

A. Oh, ungripped, there would be a slight sag.

Q. There was a slight sag?

A. A very slight sag, yes.

A JUROR.—Mr. Kennedy, when Mr. Gedge reported to you that the cars went off the track he reported that on account of the delay in unloading the ships?

A. That is when the total fell down a certain order then simply there is a car off the track.

Q. If it was reported about the cable coming off?

A. It was reported and reasons for this slowing up especially at the beginning of the discharge. [563—481]

Q. Did you ever have occasion to observe what the particular sag—what particular sag there was when the cars were ungripped and the weight was not raised?

(Testimony of James Kennedy.)

Objected to as indefinite, uncertain and unintelligible.

Mr. DOUTHITT.—The sag between rollers?

Mr. SUTTON.—Do you mean the amount of sag?

Mr. DOUTHITT.—I mean the sag, the amount of sag, the extent of the sag.

A. Unless the cable is ungripped the shoes come higher up and lift the cable above the roller and it wouldn't come down and perhaps it wouldn't touch the rollers.

Q. That is with a car going over it the cars are constantly stopped, the thing all hooked up, there is no possibility that the thing would even touch the rollers? A. Yes.

Q. That is true but when the cars are ungripped, Mr. Kennedy, and without raising the weight at the box— A. Yes.

Q. There will be a slight sag as you have testified between the rollers, will there not, a little sag of the cable between rollers?

A. That is what I said, a very slight sag.

Q. How much is that sag, have you attempted to see what it was? A. I have not measured it, no.

Q. You have not measured it? A. No.

Q. Do you know the purpose of those rollers?

A. Which?

Q. Do you know the purpose of those rollers being put up there on that coal-conveyor?

A. I can guess at it.

Q. You know the plans and specifications, don't

(Testimony of James Kennedy.)

you, and are familiar generally with that coal-conveyor?

Objected to as not proper cross-examination. Objection sustained.

Mr. STANLEY.—What was Mr. Muirhead's connection with the Inter-Island Company?

A. He was superintending engineer.

Q. In charge of what?

A. In charge of all the steamers, all the material, all the engine rooms and the hoisters and [564—482] windlasses in connection with them.

Q. Do you mean the general operations of the company?

A. The general operations of the company as far as machinery is concerned.

Q. And kept his office in the machine-shop?

A. His office was in the machine-shop. [565—483]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

June 12th, 1914.

[Testimony of J. M. Young, for Defendant.]

Direct examination of JOHN M. YOUNG, called for the defendant, sworn.

Mr. SUTTON.—Your name, please?

A. John M. Young.

Q. Mr. Young, how old are you? A. Forty.

Q. What is your business?

A. Consulting engineer.

Q. Are you connected with the Pacific Engineering Company? A. Yes.

Q. What is your connection to that company?

A. President and chief engineer.

Q. Are you connected in any way with any other corporation or institution in Honolulu?

A. I am connected with The College of Hawaii.

Q. What is your connection?

A. Professor of engineering.

Q. Where did you receive your education, Mr. Young?

A. At the University of Florida and at Cornell University.

Q. What degrees, if any, do you hold?

A. I hold bachelor of sciences in engineering, mechanical engineering and [652—570] master of mechanical engineering and civil engineering.

Q. And what has been your work along the line of your education, briefly outlining the course of your activities since you attended school?

A. Well, my engineering work was divided. I had a number of years practical experience before going to college and that was continued after college.

(Testimony of J. M. Young.)

Q. What is the nature of that experience? Just a little louder, Mr. Young, and turn a little bit towards the jury?

A. In mechanical engineering, civil and electrical engineering, embraced shop work, construction work and operation of machinery plants.

Q. What kind of work is this that you are engaged in?

A. In mining and—I mean the engineering work connected with mining such as the installation and operation of machinery, the designing of machinery.

Q. In your mining work have you had any experience at all in the use of the cable systems?

A. Yes, sir.

Q. Systems where a cable is used? A. Yes, sir.

Q. Describe what the nature of that work was and your connection with it?

A. Well, that work was from about 1892 up to '96, and embraced the direction and installation of cable ways, the operation of cable-ways, the repair and such work as was necessary in connection with cable ways, quite a number of different systems.

Q. What type of cable-ways were these of which you speak?

A. Those were the cable-ways used for surface mining in the Phosphate Mining District of Florida, then at later times from 18—from 1901 up to 1908, I was engaged in connection with machinery such as coal-conveying systems, for instance the Robinson system, the Hunt system and other systems of similar nature.

(Testimony of J. M. Young.)

Q. In what places were these systems of which you speak?

A. The head office of the company with which I was connected [653—571] was in New York and most of the designing work was done there. The cable-ways themselves were installed at various points such as Long Island City, Hartford, Connecticut, Detroit, Michigan, Stallway, Michigan, Paterson, New Jersey and at isolated points where cables were installed; there was another one at Colorado, which was used for conveying coal.

Q. How did those cable systems compare with the—have you examined the coal-conveyor system belonging to the Inter-Island Steam Navigation Company, Limited, in Honolulu? A. Yes, sir.

Q. You are familiar with its construction and make and operation? A. Yes, sir.

Q. How does this system belonging to the Inter-Island compare with the systems concerning which you have just spoken in general features?

A. Well, it is the same as the Hunt system, that is the Hunt system, it is the same installation that was put in at Detroit by the Detroit-Edison Company, at Del Ray, it is just the same system.

Q. In size number of cars and capacity, how does this plant compare with the plant of which you have spoken?

A. Some larger and some smaller. Most of the other plants were in connection with larger power-houses and the tonnage of coal handled was probably about the same as this plant handles, but this plant

(Testimony of J. M. Young.)

handles it in bunches you may say, it has periods of extreme activity and other periods it is idle. But in the large power-houses, you understand, the operation is continuous. The aggregate tonnage about the same but handled over a continuous period.

Q. Have you ever had any connection with the United States Navy? A. Yes, sir.

Q. State what connection that was.

A. I was in the steam engineering department of the navy during the Spanish War.

Q. What, if any, was your rating?

A. I was rated as [654—572] machinist, first class.

Q. State whether or not there is any higher or—any higher grade of rating as machinist. A. No.

Q. What are the requirements for attaining a rating of machinist, first class in the United States Navy?

A. Well, to get that rating a man must be a good all round machinist, he must be able to do a first class job, do it quickly and not spoil any material, be able to handle all the machines in the shop.

Q. Does that rating apply to machinery of any particular class, that is, the capacity of that person holding that rating for handling any particular type of machinery?

A. Well, he has first to be able to handle any machinery in the shop. Of course the men are divided up in accordance with any special ability they may have but in general a first class is able to handle any

(Testimony of J. M. Young.)

machine in the shop and do a first class job on it at any time.

Q. How long did you hold this position in the United States Navy?

A. I was in the Navy from April to October, that is the Navy Department.

Q. Of what year? A. 1898.

Q. And from there where did you go, to which of these operations of which you have spoken, if any?

A. Well, from there I went to the University of Florida to take charge of the department of physics. I had been appointed in charge of the department and went from the Navy shops to the State College or University.

Q. Have you been connected with any other educational institution in the line of your education?

A. Yes, sir.

Q. State what other educational institution.

A. I was connected with the department of experimental engineering at Cornell from 1902—1902.
[655—573]

Q. What was the nature of your connection?

A. I was in charge of the testing laboratories involving the use of a large number of testing machines and tests of practically all kinds, engineering appliances and machinery of a very wide range, the strength of materials, belting engines and things of that kind.

Q. What was your connection, if any with these various conveyor systems of which you have spoken?

A. Well, as engineers we were interested in select-

(Testimony of J. M. Young.)

ing the conveying system which would be most suitable for the purpose, that is the system which would handle the coal in the largest quantity and at the lowest price and in putting in a cable way that would give the least trouble for maintenance and in that work it was necessary to select the system of cable, one that was best adapted in each case to the work. The work consisted first in preliminary investigations as to the work to be done, the best way to do it, then the apparatus at the plant, the installation of the plant, the putting into successful operation and testing out, then keeping track of it afterward for a period of time.

Q. Has your connection with each of these systems of which you have spoken continued from the time—from the choosing of the system until the system was in operation? A. Yes, sir.

Q. And for any time later or did your connection cease?

A. Well, in the case of the Pennsylvania Railroad we were engineers for the railroad over the period of, oh, I guess eight or ten years and if anything happened, why, of course we were immediately called in on it.

Q. By we, whom do you mean?

A. The Westinghouse-Church Conveyor Company.

Q. Is that firm engaged in engineering activities?

A. Yes, sir.

Q. Can you state whether or not its operations are

(Testimony of J. M. Young.)

of small [656—574] magnitude or great magnitude?

A. Well, they are of rather large magnitude, I should say. The company is engaged in practically all large engineering works such as the building of power-houses, railway systems, railway terminals and dock improvements, rather a wide range, also power transmission systems, hydraulic plants.

Q. How long were you connected with this firm?

A. I was connected with that firm from, oh, well, in an indirect way from 1912 to 1908, then I was actually in the office on the work from 1904, to 1908.

Q. Now, calling your attention particularly to the coal-conveyor system of the Inter-Island Steam Navigation Company here in Honolulu, have you ever that conveyor system in operation?

A. This particular one?

Q. Yes? A. Yes, sir.

Q. In what operation was it in use?

A. In the operation of conveying coal.

Q. What means, if any, are provided at this plant for regulating the tension on the cable?

A. That is accomplished by means of a floating idle weight which comes in contact with the cable by means of a pulley and the weight floats up and down as the tension varies.

Q. I call your attention to a model, this model which has been offered in evidence by the plaintiff and ask you if this correctly in general shows the construction and mode of operation of the makai end of the coal-conveyor plant of the Inter-Island

(Testimony of J. M. Young.)

Steam Navigation Company, not in all details by generally speaking?

A. Yes, sir, in a general way I should say that that was correct.

Q. I call your attention to what has been referred to by the witnesses as a weight or the weight or the box and ask you if that in general correctly shows the position of the weight to [657—575] which you have just referred?

A. Yes, sir, that looks all right.

Q. What is the purpose of this weight, Mr. Young, or a purpose, if it has more than one purpose?

A. The purpose of that weight is to maintain a uniform tension in the cable.

Q. In connection with the gripping and ungripping of the cars, how does this weight operate while the cable is in motion?

Q. Well, when a car is gripped—when a cable is gripped by the appliance on the car for that purpose, that of course puts a slight jerk on the cable and that is transmitted to the weight and the weight would move it slightly, then immediately the car is in motion the weight will drop back to its normal position, say, or moves up and down to take up the variations.

Q. Is that raising of the weight on the gripping of the car considerable or slight?

A. No, it is not very considerable, it is usually just a small amount, a small amount.

Q. Is there any necessity for having a weight on this cable at any point, a floating weight such as you

(Testimony of J. M. Young.)

have described, and indicated on this model?

A. Yes, sir, there should be a weight there in order to preserve a unity in the tension of the cable. Of course it would be possible to have the cable adjusted perfectly, the weight could be removed and the cable spliced the proper length to operate it for a short time, but then with the temper and stretch of the cable and other factors which come in make it advisable to have this weight there to take up this tension.

Q. Has the weight any other purpose?

A. Yes, it makes it easier to remove the cable in case it is necessary to take it off and replace it, makes the system more flexible.

Q. What is the effect, if any, upon the cable upon raising the weight after the cable is brought to rest?

A. The immediate effect of raising the weight is to reduce the tension in the cable [658—576] and immediately slack will appear as the result of the raising of the weight.

Q. Where does that slack appear first?

A. It first appears in the parts of the cable which are nearest to the weight.

Q. With reference to the model, what do you mean by the part nearest, assuming that the weight is in approximately its correct position?

A. Well, it will first appear right up above here, the portion of the cable in the two strands that support the weight.

Q. Is the effect of the raising the weight evidenced in any other point on the cable system?

(Testimony of J. M. Young.)

A. Yes, gradually and slowly the slack will travel around the system and will become noticeable in practically all parts.

Q. By gradually and slowly, what do you mean in connection with, for instance, the point at the extreme makai end of the conveyor—that is, put it this way, how long a time if you say the slack becomes evidenced at other points on the system gradually, how long a time would it take for the slackness to be evidenced at a point at the makai end of the conveyor and upon the makai eight pulleys at the commencement of the turn?

A. Oh, there is a considerable interval of time, I should say perhaps between one and two minutes.

Q. In what direction from the weight does the slack travel or appear to travel?

The COURT.—That is, as regards the axis of the cable weight?

Mr. STANLEY.—Yes.

A. It will travel in both directions.

Q. Meaning by that as regards this system in both directions, how do you mean?

A. I mean that part of the slack goes that way and part of it goes this way.

Q. All on one track, Mr. Young?

A. First on one track and then it becomes apparent on the other track. [659—577]

Q. On both ends of the rope or only one end of the rope? A. Both ends.

Q. Now, calling your attention particularly to this point by the eight pulleys at the makai end of the

(Testimony of J. M. Young.)

conveyor, these eight pulleys being on the Ewa side of the track, assuming that the weight is in its correct position, state whether or not—state how the slack travels from this point to the point over there by the eight pulleys?

A. Well, on raising the cable—raising the weight the slack will pass through the cable in that direction and in this direction and the cable will become slack between the supporting dollies or pulleys.

Q. By the supporting dollies or pulleys, do you mean those in the straight line of track or around the curve?

A. Well, the dollies would apply to those on the straight line of track, the pulleys are called the wheels set on the curve on the end.

Q. This is called a pulley and this a dolly? (Indicating.) A. Yes.

Q. By a pulley you refer, for instance, to Defendant's Exhibit 5? A. Yes.

Q. And by a dolly you refer to Defendant's Exhibit 4? A. Yes.

Mr. STANLEY.—I ask that these, Defendant's Exhibits 4 and 5, be specially marked and received in evidence.

The COURT.—They may be received in evidence as exhibits and marked respectively as indicated by their marks for identification.

A JUROR.—Mr. Young, do you mean the slack would travel both ways from the box, if raised up, the slack of that rope there, the slack if you raised the buckets?

(Testimony of J. M. Young.)

A. Yes, sir, it does. As a matter of fact, if you make a mark on the cable at this point where the two are practically and then raise the box you would find the mark would move this way and would move that way with the cable and it moves approximately the same in each [660—578] direction. For example, if by raising the weight of the cable you get a foot of slack at that point, six inches of it would go this way and six inches that way approximately, say within an inch.

Q. Mr. Young, are you familiar with this conveyor down here? A. Yes, sir.

Mr. SUTTON.—You stated a few moments ago by raising the weight the slack became evident throughout the length of the system and that it gradually approached this point up here, referring to the point where the eight pulleys are at the makai end of the conveyor, and qualified your answer that it took a considerable time by saying that that was somewhere between one and two minutes. Now, at the end of one or two minutes, how much slack would be evident at a point immediately mauka of the eight pulleys on the Ewa side of the track at the makai end of the coal-conveyor, that is—

A. The slack would manifest itself by dropping down between the supporting dollies and at that time the cable would be slack enough so that it would touch the plank floor between the dollies not the entire distance but for a considerable portion of the distance, perhaps a few feet or something like that.

Q. Would that slack or any amount of the slack

(Testimony of J. M. Young.)

be evident on the track or immediately opposite

A. Yes, sir, it would be shown on both sides.

Q. That is in the Waikiki track?

A. Yes, sir, about the same I should say.

Q. Have you observed, Mr. Young, the effect upon the cable of suddenly stopping the engine which gives power and operates the cable? A. Yes, sir,

Mr. DOUTHITT.—When, what time?

Mr. SUTTON.—Within the last month, Mr. Young?

Mr. DOUTHITT.—We object to it, there is a completely different [661—579] motive power used.

Mr. SUTTON.—Mr. Young, did you observe the effect last year when the steam engine was the motive power?

A. Well, that is a point that I have had a great deal to do with. I have put in and operated the system both with steam as motive power and electricity as motive power, and that is one of the important factors that we have to look out for is the matter of gripping and ungripping cars and what happens to the cable. Of course, it will be admitted that there is some difference between the action of steam and electricity, there is quite a difference.

Q. In what way, what is that difference, for instance?

A. Well, the electricity is much more satisfactory for such purposes.

The COURT.—Well, only in that particular there a difference; you say there is quite a difference, what is that difference, not as to whether it is satisfactory

(Testimony of J. M. Young.)

factory or unsatisfactory, but whether or not the force or tension is indicated more by one system than another?

A. Well, the electric power is subject—is less subject to fluctuation because the governing of the machine is better.

Mr. SUTTON.—Well, calling your attention particularly to the portion of the stopping of the motive power, is there any difference between where your motive power is steam and stopping where your motive power is electricity?

A. No, there is no material difference.

Q. Are you familiar with conditions in this plant as they were say a year and a month ago?

A. A year ago?

Q. Yes. A. Yes, sir.

Q. At that time what was the motive power on this plant? A. That was steam.

Q. Steam? A. Yes, sir. [662—580]

Q. Do you recall what the means, if any, was for shutting off the steam, shutting off the power?

A. Well, I did not notice that point particularly, but I believe though it was an ordinary globe valve, it may have been a gate valve, but anyway it was a valve operated with a handle or crank.

Q. What is the difference between a globe valve and gate valve? I understand the difference is that in one the steam is shut off instantly and in the other, that is the globe valve, several turns have to be made in order to gradually turn off the steam?

A. Well, you are mistaken in that. A globe valve

(Testimony of J. M. Young.)

and gate valve require about the same number of turns to handle and shut off, The principal difference is that a globe valve in its operation changes the direction of the steam, whereas the gate valve interposes a gate in the opening and it is a straight shut off, whereas the globe valve involves a change of direction of steam.

Q. Regardless of whether the method of shutting off the steam was a globe valve or a gate valve, could the steam be shut off instantly? A. No.

Q. In the case of electricity can the power be shut off instantly?

A. The switch can be opened practically instantly.

Q. And in the case of either steam or electricity is there any motion on the part of the car grip and the cable or in the cable itself after the motive power is shut off?

A. Yes, there is a movement, the cable-way does not come to rest immediately, there is a short interval of time.

Q. What is that due to?

A. Why, it is due to the inertia of the moving parts, that is the weight of it and motion, the pulleys, cable, cars and machinery.

Q. How far would you say that a car, for instance, would travel from the time that the steam is shut off until the car [663—581] comes to rest?

A. Oh, it would travel about a car's length approximately.

Q. Have you any idea of the length of the cars in use down at the coal-conveyor plant of the Inter-

(Testimony of J. M. Young.)

Island Steam Navigation Company?

A. Well, I have not measured those cars, I should say, off-hand though, they are approximately ten feet over all.

Q. From bumper to bumper?

A. Yes, approximately that, in the neighborhood of ten feet.

Q. Now, as I recall the testimony of one of the witnesses in this case, Mr. Young, it is this, that on one occasion the motive power was shut off, the motive power which operated the cable was shut off, and the momentum of the cars was sufficient to give a slack at this point after an interval of time sufficient for a man to walk from the scale-house to the makai end of the track a distance, say, of two hundred and seventy feet?

Mr. DOUTHITT.—Between two hundred and fifty and three hundred feet.

Mr. SUTTON.—Between two hundred and fifty and three hundred feet, Mr. Douthitt says. Now, in your opinion would it be possible for any slack to be found at that point after that interval of time?

Mr. DOUTHITT.—That depends on how fast you walk?

Mr. SUTTON.—Well, consider you run.

A. May I ask a question?

Q. Yes.

A. What was the condition of the weight at that time?

Q. The weight had not been lifted.

Mr. SUTTON.—We propose to show by this wit-

(Testimony of J. M. Young.)

ness that in any case the slack that would be caused by the momentum of the cars almost instantly disappears on account of the fact that this weight tumbling with a few seconds takes up that slack.

Mr. DOUTHITT.—We object to it. [664—582]

Objection overruled.

Exception.

Mr. SUTTON.—Can you answer the question now, do you recall the question so that you can answer it?

A. Yes, sir, I would like to hear that again, if you please?

Q. One of the witnesses in this case testified that on one occasion when he was at the scale-house the engine that operated the cable was stopped; that immediately thereafter he started for the point where the eight pulleys are at the makai end of the conveyor on the Ewa side and when he arrived at that point there was sufficient slack so that there was no necessity for lifting the weight, that there was sufficient slack without lifting the weight to replace the cable on the pulleys. Now, what I want to find out from you is this: The cable being off at that time the four mauka pulleys of the series of eight, I would like to find out from you, Mr. Young, as to whether in your opinion there would be any slack at that point due to the momentum of the cars by the time that that man had walked from the scale-house to this point a distance of between two hundred and fifty and three hundred feet?

A. Why, the slack would have been taken up

(Testimony of J. M. Young.)

before that time by the moving weight. The slack will move around, of course, and that is why the weight is placed in the line is to take it up and it certainly would not have remained there that long. It is possible for the slack to remain for a short period just instantaneously you might say.

Q. How long a period, for instance, in seconds or minutes or hours?

A. Oh, a couple of seconds it might remain there but certainly not very long, because the cable moves around, there is a weight attached to it here, it must come.

A JUROR.—Mr. Young, the engine has stopped, the car is running this way, it would naturally go a little lower down on that end, the car is running that way after the engine is stopped. [665—583] Now, then, the weight taking in the slack ahead of the cars, is that what you mean, the slack that the cars shove?

A. Yes, sir, the weight will take up the slack in any part of the system but it will take it up nearest of course in front of the car because not affected by the momentum.

Mr. SUTTON.—Now, Mr. Young, assuming that there was not only a car on this track but also a car on this track and both cars were gripped to the cable and both moving, would there be slack between those cars, would there be more slack on one side of the cable than the other?

A. No, there should not be because the weight is so put on, so adjusted, as to automatically take up

(Testimony of J. M. Young.)

the slack and prevent its appearance, certainly in any abnormal amount.

A JUROR.—Mr. Young, that weight would have to be heavy enough to haul the weight of the cable and weight of the cars, wouldn't it?

A. Certainly, yes, which it is.

Q. About how much would that box with the weight in it weigh?

A. Oh, that box will weigh approximately nine hundred or a thousand pounds, I should say, about that.

Q. Well, the slack that is ahead of the cars after they stop comes clear around the conveyor and passes over the track before it gets to the box?

A. Well, you understand that that travels in both directions.

Q. Yes, but I say the slack which is ahead of the cars, assuming that they are loaded cars on this makai or Ewa side of the conveyor?

A. Yes, with the engine standing some of it will.

Q. Well, it passes over the drum before it gets to the weight, does it not? A. Yes, sir, yes.

Q. Well, will the weight of that box take it up over the drum, too? A. Yes, I believe so.

Q. It will slack around the drum?

A. This drum you understand is geared up by a couple of pinions and gear wheels [666—584] and with the power cut off it can be moved, it is not very heavy to move with the power shut off.

Mr. SUTTON.—Is the weight of the box to which reference is made sufficient to turn the drum and

(Testimony of J. M. Young.)

the cable around upon the drum in bringing the cable to rest with equal tension at all points?

A. Yes, yes, I believe so, it will just about do that, that is the idea.

A JUROR.—Mr. Young, you spoke about it being geared up to the drum to get its power, it is geared to get the power by turning the gear, by turning the drum?

A. The object of putting the gear-wheels in is to reduce the rate of the motion. An electric motor is a comparatively high speed proposition and the drum is comparatively slow speed.

Q. But with a steam-engine?

A. Well, the same is true there, the one travels considerably faster than the other and it is necessary to gear it down or gear it up as the case may be.

Mr. SUTTON.—Do you recall, Mr. Young, right at this point, what the conditions were with regard to the gearing up or down, say a year ago, when steam was in use?

A. Well, the steam, the shaft of the engine runs at a higher speed than the drum so that it is necessary to gear the speed down.

Q. And was it geared down? A. Yes, sir.

A JUROR.—But in that gearing if the drum runs on the same speed as the engine, run direct to the engine it would not have the power it would if it was geared?

A. Oh, no, the gearing has a double function, it reduces the speed but increases the power.

Mr. SUTTON.—Do you all understand that? If

(Testimony of J. M. Young.)

you do not have Mr. Young explain it. Why is that, Mr. Young?

A. Well, it is because in connection with the fundamental laws of motion the power—there are two factors involved for any given work that is done, the one is the force that is employed [667—585] the other is the way with which that force is employed. Now, if we employ comparatively great force the speed with which it accomplishes its work need not be so rapid as if we had a small force working at a high speed. That is a small force with a high speed will accomplish the same work as a high force with a small speed. They are the two factors, force and speed, and that is a fundamental law that applies to all forms of gearing and belting.

Mr. SUTTON.—Have you had any experience with cables, the use of steel cables? A. Yes, sir.

Q. Briefly describe the use of the cables to which you refer, how long they were used and what manner, how long the weight or strain put upon it?

A. Well, my experience with a cable has been rather a wide one and covers practically all the range of the use of cables and I have had experience on the Ledger Cable-ways, the Roebling Cable-ways, the Trenton Iron Company's work and the Hunt system, the Robinson system, the Jeffries system and each one of those is quite a little story in itself. I can detail it to you if you wish it.

Q. I don't say that, but if you had any experience with the use of rotten cables?

A. Yes, rotten cables are nearly always present,

(Testimony of J. M. Young.)

rotten cables occur in nearly all kinds of cable work practically all the time, because the strands of the wire will break in passing over the pulleys, sometimes due to wear, other times due to undue bending of the fibres in passing over the pulleys so that a broken cable is a very common occurrence. In fact, on most any cable-way it is an easy matter to find broken strands of the cable.

Q. In these cables to which you have reference one or two cables, have pieces of wire been sticking out from the cable itself, pieces of fine wires composing the strands?

A. Yes, [668—586] sir, that is very common.

Q. Could you illustrate by reference to this piece of cable here?

A. Now, just what is it that you want illustrated?

Q. Just illustrate by the use of this cable how the wires come out and how they appear?

A. Well, there are two kinds of fractures that are common, one is a fracture that occurs on the inside of the strand due to the friction of one strand over the other and undue bending of the wire; in such a case the wire would pull out and stick out there a short distance anywhere from one-tenth of an inch in a cable like this up to perhaps three quarters of an inch. The other kind of fracture is one that is due to wear on the surface of the cable and the ends of the wire in such case are worn down and assume a sharp edge due to being worn down; in such case one strand would stick out that way and one back this way so there will be two ends. In the other

(Testimony of J. M. Young.)

case there will be just one end.

Q. Mr. Young, will you just make a little drawing illustrating the effect of wear—before I ask you that, Mr. Young, I would like to know in speaking of cables and the wear on them whether you meant to say that the strands were sticking out or the wires were sticking out?

A. I was talking about the individual wires composing a strand. Just what is the point?

Q. I just want you to illustrate the effect of wear upon the strands of a cable such as this?

A. Do you mean the individual strand?

Q. Or the wires composing the individual strand?

A. I will simply make a sketch then of one wire and the shape—

Q. If you can make a little sketch showing the cable longitudinally in section, a side view of the cable and show where the wire comes, then illustrate the effect upon an individual [669—587] wire of one of the strands of that cable?

A. Well, the wire of course, comes on the outside of the cable and comes on that portion that comes in contact with the pulleys and the steel being harder than the cast-iron of course it naturally grooves the iron out in much the same shape as this is shown, but the steel also suffers in the process of abrasion and becomes flattened on the outside, and after it is worn, the cross-section of the wire, that is an individual wire would be like that (illustrating with drawing), this portion would be worn off so that a cross-section of the wire would be something like

(Testimony of J. M. Young.)

that at the center. Now, if we take a side view of an individual wire which would be bent around like that—we would find it worn down in the center like that, this being a cross-section of the wire itself.

Q. A cross-section of the wire itself?

A. No, a side elevation of the wire, it would be worn down somewhat in this shape, or a more exaggerated shape like that.

Q. And can you indicate by putting the letter A at the point where the wire would break from being worn out?

A. This point A that would be the point of minimum cross-section the point at which the break would occur due to wear on the outside.

The COURT.—That is the weakest point as a matter of fact? A. Yes, that is the weakest point.

The COURT.—One is a cross-section and the other a longitudinal section of the same wire? A. Yes.

Mr. SUTTON.—Now, in case, Mr. Young, the wire was worn—the cable was worn and the individual wires were in the condition that you have illustrated them to be on this piece of paper—

A JUROR.—Could you have Mr. Young explain this to me, in explaining it go back a little further and refer to the sample of cable?

A. The primary cause of wear on the cable [670—588] is the abrasion caused on the surface of the cable from the cast-iron. The cable is made of steel which is hard and elastic and it cuts into the cast-iron but in that process of cutting it is subject to abrasive action and gradually wears down. The

(Testimony of J. M. Young.)

wear is most apparent on the exterior of the cable on the portion that come in contact with the cast-iron pulleys. The effect of that wear is to flatten off the rounded shape of the individual wires tending to make them flat. That flatness of the individual wires ultimately shows in the cable by making a smooth surface of the cable so that it is more like a bar of iron from casual observation, the effect of the wear is as shown on this sketch; it tends to wear the wire down on one side such as to reduce the cross-section leaving the exterior surface of the wire flat and the other side in its original form such that a cross-section there would be a semi-circle or at least a segment of a circle and the side elevation would show the wire gradually tapering off to a point near the center where it would be the minimum. Then it would gradually enlarge and come back to the full-cross-section of the wire. One of those views is a side elevation of the wire, the other is a cross-section.

A JUROR.—Well, now, in this here, your illustration here, say a wire of three thousand feet on an endless pulley going around like that and it gradually wears down and flattens out in this condition would that tend to lengthen the wire, lengthen the whole cable?

A. Well, it would in an extreme case. By an extreme case I mean this, that when a cable is first put into use it is, we will say, its strength—we will say a cable like this cable will have a strength of perhaps say forty thousand pounds, something like that, and as the wires, the cross-section becomes somewhat less

(Testimony of J. M. Young.)

the cable will stretch a little bit. That stretch, however, does not last very long; it soon assumes a condition where it remains constant, very little change [671—589] takes place, because the strength of the cable is so great relative to the stress to which it is subjected. A factor of safety is employed there that is approximately the same as in a passenger elevator, say a factor of safety of about twenty or upwards. So that you can easily see that in a cable working under those circumstances or under those conditions would not be subjected to any very large stretch, because the force on the cable is so small relative to its ultimate strength.

A JUROR.—Yes, but I mean if it is worn down as you have described, as it wears down going around the curve it flattens and it gradually flattens on one side that leaves the other side so that the whole weight is going on the strong side of the cable?

A. No, no, the reduction of the cross-section of the individual wires there would not, perhaps, be more than about, well, it might be about one-third.

Mr. SUTTON.—A third of what?

A. A third of the cross-section of the wire.

Q. Of that individual wire?

A. Of that individual wire, and that will not materially affect the strength of it. Cables are discarded not on account of the strength being impaired, not on account of undue stress, but on account of other incidental matters, for example, such as unnecessary wear on the pulleys. You notice the grooving on those pulleys, that grooving and cutting out the cast-

(Testimony of J. M. Young.)

iron is very much accentuated by a worn cable, the particles protruding from the cable that is broken wires protruding, and it has this effect here, the worn surface of the dolly. That is very much accentuated by sharp ends protruding even for a short distance. Then another effect which is even more troublesome than that is the cutting out of the grips which are fastened to the cars and which propel the cars. The grips are cut out quite rapidly by a broken cable by a cable the strands of which are broken. It is not the strength [672—590] of the cable which usually rejects the cable, it is the worn surface which damages the pulleys and also cuts out the grips.

A JUROR.—Would a broken worn cable, such as you have described, would it have any effect; would it hinder it running around the pulley?

A. No, it will not.

Q. It would not make it any harder to run around?

A. No, the cable has some little flexibility, is somewhat more flexible in the worn condition than it is when new? A new cable is much more troublesome about cutting of the pulleys than an old one because it is stiffer, more rigid and it is subject to idiosyncrasies of that kind and it will twist over much more readily than a cable which has been in use.

Mr. SUTTON.—In this connection would the worn effect of the cable, that is, having the wires sticking out perpendicular, say from the cable itself, a distance of one sixteenth of an inch or greater have any effect upon the cable in its operation on the curves around the pulleys? A. No, no, it will not.

(Testimony of J. M. Young.)

A. No, no, it will not. You see that effect is so incidental it is such a small thing it is very much like the fibres of a hemp rope sticking out there, speaking relatively, and they smooth down and straighten out going around the pulleys.

Q. What happens to these projections from the cable when the cable is passing around the pulleys?

A. They smooth out.

Q. And by smooth out, what do you mean?

A. Well, I mean that they are crushed down parallel with the axis of the cable in the direction parallel with the axis of the cable.

Q. What effect, if any, had the grips or the shoes rather of the grips of the cars on the cable in that condition?

A. They have very much the same effect with this exception that the individual strands broken in are more likely to be bent back with the grips than they are going around the pulleys because [673—591] the grip operates from two sides at once whereas the pulley—the wire going around the pulley, the cable going around the pulley, touches one side only and has the tendency to smooth out the wires and bring them down. Of course there would be a slight rotary motion perhaps, that would be present, that would not be a necessary thing, however.

Q. By a rotary motion, explain which you mean?

A. Well, a slight tendency to move around its own axis.

The COURT.—It kind of rocks, the cable rocks?

A. Yes, back and forth, a small amount, however,

(Testimony of J. M. Young.)

that would not be affected materially by the presence of those wires.

Mr. SUTTON.—What would be the cause of the rotation, generally speaking?

A. Why, that would be due to small variations in the tension of the cable. You understand that that cable is made up by twisting a large number of wires. They are brought in that condition so that that is essentially a twisting operation and if the cable is tightened, if the ends were free to rotate, it would untwist partly so that any change of tension or stress in that cable will have an effect to rotate it one way or the other, but that does not affect the integrity of the cable at all; it simply has the tendency of the particles to release themselves to be free at the end.

Q. Now, what would be the tendency of a roughened cable in passing around the pulleys at one of the curves on this conveyor, one with wires sticking out from the cable itself a distance anywhere from one-sixteenth to an inch—one-sixteenth of an inch to an inch?

A. Why, I don't think you could observe any effect at all; I think it would simply run around the pulleys the same as any other cable.

Q. Calling your attention particularly to Defendant's Exhibit 5, which as I understand is one of the pulleys similar to the pulleys in use on the curves, will you state what the [674—592] effect, if any, would be in the cable in its roughened condition in regard to that pulley, would there be a tendency to fall, a tendency to rise, a tendency to keep away

(Testimony of J. M. Young.)

from the pulley, or what would be the effect of that roughened condition of the cable in its operation on that pulley?

A. Well, the effect of the contact of the pulley is to smooth out the broken wires, and the force required in doing that is microscopic compared with the stress in the cable. It is very small and to an observer standing by the pulley while it is in operation you could not detect any difference between the operation of a cable with *with* those broken wires and with one that had no broken wires, the operation is practically the same. Of course, there might be some very small incidental effects there that would be purely local that might occur on a half an inch say, on a portion of an inch on the circumference of this pulley, but they would not extend for any distance because the wires touch of course, only at one little spot; that is, a broken end, it could not extend for any distance.

Q. It has been testified in this case, Mr. Young, that the cable on account of its roughened condition has a tendency to rise up on the pulleys at the curves, will you state whether in your opinion that is true or not? A. In my opinion?

Question withdrawn.

Q. In your opinion, Mr. Young, would the roughened cable have a tendency to rise on the pulleys?

A. No. I think—in my opinion the effect would not be of that kind at all. It has purely an abrasive effect upon the surface of the pulley.

Q. In order for the cable to rise out of the groove

(Testimony of J. M. Young.)

in the pulley, the kind of pulley in use upon the curve, similar to Defendant's Exhibit 5, what motion is gone through by the cable. I don't know whether I make myself clear. I wish you would explain, Mr. Young, what occurs when the cable rises out of the pulley such [675—593] as this and goes above the top of it. Perhaps you can illustrate better by the use of a piece of paper?

A. Well, you understand, first of all that these pulleys are specially designed with a view to keeping the cable in a correct position, and the pulleys are so made with respect to the axis on which they revolve that it is capable of lifting up and down.

Q. The pulley itself?

A. The pulley itself can lift up on its axis; so that in case of a cable—the cable when it is passing around the pulley with the grip attached tends to lift up on account of the presence of the grip why the pulley will follow it, the pulley will follow it up and in that way it is always in contact with the surface of the pulley. Now, then, in case of an obstruction of any kind were thrown on the track such as a piece of wood or a lump of coal or anything of that kind should get under the cable and would tend to lift it up, of course in its contact with the surface of this pulley which has a conical shape, it would tend to lift the pulley up and it is self-protective. It is more or less a fool-proof device; that is why it is put in there by Mr. Hunt. He made it especially to be fool-proof so that in case of an obstruction on the track the pulley, the cable would automatically remain on the pulley.

(Testimony of J. M. Young.)

Q. Because it follows the cable up and down?

A. It follows the cable.

Q. Illustrate if you can the effect of the cable rising on the pulley above the groove and say coming within a quarter of an inch of the top of the pulley. I wish you would illustrate, Mr. Young, if you can, the effect from the standpoint of the cable in rising on the pulleys?

A. Oh, yes, I see what you are driving at. You understand that that cable is around a circle; it is about three-quarters, perhaps eighty per cent, of a circle and on account of the pulley being made in a conical shape on the side of the circumference of that curve, which is about a twelve-foot radius, is less at the bottom part of the pulley than it is above [676—594] so that in order to get the cable off of that series of pulleys it is necessary to increase the length of the cable to a certain amount due to the larger diameter of the pulleys at the top than at the bottom, and on account of that fact any tendency of the cable to rise is accompanied by the lifting of the pulleys such as to counteract the effect. I can make a sketch so as to show the shape of the pulley and perhaps illustrate that better. [677—595]

Direct examination of J. M. YOUNG resumed.

Mr. SUTTON.—Mr. Young, would you kindly explain the action of the cable in relation to a car gripped to the cable by a shoe in its course around the pulleys, say at the makai end of the conveyor?

A. Well, a car on its passage around the group of pulleys would tend to raise the cable a little bit in

(Testimony of J. M. Young.)

front because of the way that the grip is hung. The grip is hung in such a way that the front end is slightly higher than the back end and in going around the cable is raised slightly such that the pulleys are lifted up slightly in going around. And the back end of the grip being lower drops the cable down in its old original running position. [682—600]

Q. As I understand it the grip which holds the cable is open on one side, the slot into which the cable drops has a means for permitting the cable to be taken out of the shoe? A. Yes.

Q. On which side of the shoe is that opening?

A. It is open on the outer side, that is, the side most remote from the center of the circle.

Q. Referring then to the middle, the opening on the slot from which the cable could be removed would be on the outer side? A. Yes.

Q. Can you give us your opinion as to what causes, if any, result in the cable coming off the trolleys on the curve?

A. The causes for the cable coming off?

Q. Yes.

A. The cable might be thrown off the pulleys by an obstruction on the track; it might be thrown off by a broken pulley, such, for example, as a piece being knocked out of the edge of one of these pulleys; it might be thrown off by one of these strands consisting of nineteen or twenty wires, perhaps, maybe more, being entirely broken off and being ravelled back for a foot or two or a few feet, that might get caught upon some obstruction and thereby throw the cable off.

(Testimony of J. M. Young.)

Q. Do you know of any other causes which would result in the cable coming off?

A. Yes, it might be thrown off.

Q. That is in the course of its operation?

A. It might be thrown off by the derailment of a car.

Q. It might be thrown off by the derailment of a car? A. The derailment of a car might do it.

Q. Without one of the causes operating and without human interference, is there any way in which the cable could get out of its position in the slot or groove in the pulleys on the curve?

A. No, the stress on the cable is in such a direction that would naturally keep it in position, and any force that is operating [683—601] there is in that direction. Therefore the cable would tend to keep in position.

Q. What would be the effect, if any, upon the cable of lumps of coal on the track sufficiently high to interfere with one of the wheels on the car??

Objected to as immaterial and there being no evidence to show that there were any lumps of coal on the track and as merely speculative.

Objection sustained.

Mr. STANLEY.—As I understand the testimony in this case the cable in use at the time of the accident to Mr. Ward was a six strand, nineteen wire, right hand, three-quarter inch cable, steel cable, similar to this cable here with the exception that this is a left-hand cable. Is that right, Mr. Douthitt?

Mr. DOUTHITT.—That is right.

(Testimony of J. M. Young.)

Mr. STANLEY.—A Roebling cable?

Mr. DOUTHITT.—A Roebling cable.

Mr. STANLEY.—I will ask you, Mr. Young, whether or not a cable of that construction was a proper cable to use upon this coal-conveyor; that is, of that type?

Mr. DOUTHITT.—It is admitted that the Roebling cable is a proper type, so far as the type is concerned, and it is therefore immaterial.

Objection sustained.

Mr. SUTTON.—Now, Mr. Young, what is the breaking strain of such a cable, or, in other words, how much weight will it sustain before breaking, an absolutely new cable?

A. Oh, that cable will hold probably in the neighborhood of forty thousand pounds dead pull.

Q. What is the actual amount of approximate amount of strain placed upon the cable in its position upon such a conveyor as this, or upon this conveyor?

A. Oh, about, I [684—602] should say, from a thousand to twelve hundred or fourteen hundred pounds; in that neighborhood.

The COURT.—Meaning by weight, tension?

Mr. SUTTON.—Yes.

Q. Is that tension greater than fifteen hundred pounds the instant the car is gripped to the cable, a loaded car, the car and its load weighing about three tons, is the strain on the cable when such a car grips to the moving cable greater than fifteen hundred pounds?

(Testimony of J. M. Young.)

A. No, I think not. I think fifteen hundred pounds would be probably a maximum.

A JUROR.—Is that strain generally throughout the entire cable, or is it more at either end of the conveyor?

A. Well, it is uniform between the car where the cable is being gripped and the engine which is pulling the cable.

Mr. STANLEY.—Uniform?

A. It is uniform in that portion just the same as if we had a rope stretched across this room on which we were pulling if we were to cut that rope at any place and put in a spring balance the reading of the spring balance would be the same as long as we pulled.

Q. But would not the tension be greater as it winds or travels around the pulleys?

A. No, it is practically uniform; there is very little difference. Of course, there is a variation there which is due to the friction of these pulleys, but that is comparatively small expressed in percentage. The friction of those pulleys would probably amount to, oh, say, a maximum of five or eight per cent, something like that.

Q. The friction would be greater on a new cable than an old one, the one you described a little while ago? A. Which friction do you refer to?

Q. Around the pulleys?

A. The friction on the surface of the pulleys from this point is somewhat greater on an old cable due to the fact that the cable is roughened, pieces of

(Testimony of J. M. Young.)

the [685—603] cable breaking and sticking out so that the bight that the cable gets on the pulley is somewhat greater, therefore, the friction is so much greater.

Q. Greater on the dollies also?

A. Yes, it is greater on every portion of it, particularly on these pulleys.

Mr. SUTTON.—Would there be any greater friction on the axis on which the pulley revolves with an old cable or new cable?

A. No, there would be no difference, because the axis of the pulley receives no difference in impelling cause they are turned just as easily as if pulled by hand.

Q. A new cable or old cable? A. Yes, sir.

The COURT.—The strain on the cable is greater at the moment of starting the car than at any other portion in order to overcome the inertia?

A. Yes, sir.

Q. So that when the clutch and shoe come in contact with the cable at the moment of starting the strain on the cable is greater?

A. Yes, and I should say the maximum would be probably fifteen hundred pounds.

A JUROR.—Would that be for five or six or eight loaded cars, and pulling empties on the other side?

A. Yes, sir; that would not be the result not with pulling one car that would be the normal operating condition, I should say.

Q. For the whole conveyer?

A. Yes, sir, of the entire system. In other words,

(Testimony of J. M. Young.)

the strain in that cable under normal working conditions with loaded cars and empty cars, the cars being gripped and ungripped, would be about, we will say, the strain would be about one-twentieth or one twenty-fifth of the strength of the cable.

Q. From one-twentieth to one twenty-fifth?

A. It varies. Assuming that the cable had a strength of forty thousand pounds and there was a strain in the cable of fifteen hundred pounds, that would make a ratio of one to twenty-seven and a half; assuming [686—604] that the cable had been in use a few weeks and worn down slightly and the strength was not so great then the ratio would be somewhat less. A cable of which one-third of the strength were taken away that would then be a ratio of twenty, so that there is a constantly varying ratio. It does not remain constant due to the wear of the cable.

Q. How long, in your opinion, would it be good practice to use a cable such as the one I have referred to, a Roebling, three-quarter inch, six strand, nineteen wire cable on this conveyor, assuming that the use of the conveyor for discharging boats is about six or seven or eight days a month in discharging the coal vessels, and two or three hours a day throughout the year in loading coal onto the Inter-Island vessels and in similar work. Under those circumstances, what would you say, in your opinion, would be good practice, what length of time would it be good practice to use a cable?

A. The economical length of life of a cable working

(Testimony of J. M. Young.)

under those circumstances would be about eighteen months, I should say.

Q. And by the economical life of the cable, what do you mean, simply the cable itself, or in relation to other things?

A. Well, I mean the point at which the repairs and maintenance cost to keep a cable in good working condition would exceed the interest on the cost of the new cable.

Q. And in connection with the economical life of the cable, would any consideration be given by you to the fact of the wearing of the cable on the pulleys?

A. Certainly there would be wearing on the pulleys, the detrimental effect of the broken wires in passing over the grips, the wearing of the pulleys, the grinding out of the floor on the cable-way.

Q. Any effect on the drum?

A. Yes, sir; the wearing of the drum also.

Q. At the end of eighteen months such as I have described, [687—605] what would be the proportion of the strength left in that cable as compared to its original strength?

A. Well, I can't really give my opinion on that; it is a question I have never investigated by actual tests, but my opinion would be that a cable would be about five-eighths of its original strength.

Q. At the end of eighteen months of such use?

A. Approximately, that would be a guess only.

The COURT.—You have never tested a cable that has been used for eighteen months under similar conditions?

(Testimony of J. M. Young.)

A. I have never tested one under those circumstances.

Q. Never made an actual test? A. No.

Mr. SUTTON.—Have you ever used a cable or seen a cable in use for other work after it had been discarded for use of this nature?

A. Oh, yes; that is quite common. Cables are removed, that hauling rope would be used for guy wire or for other purposes, purposes which involved the strength of the cable, but which would not involve the wearing of the surface.

Q. Mr. Young, the testimony in this case of Mr. Ward is that at the time of this accident to him the cable was in this position indicating on the model that the cable was at the point at the makai end of the conveyor and on the series of eight pulleys on the Ewa side of the conveyor; that the cable was out of its position on the first four of the eight pulleys that is on the mauka four of the eight pulleys in its position on the makai four of those eight pulleys. Will you step right down here to the model so that you can see better? In your opinion, Mr. Young, could the cable get in that position without human effort?

A. No, I believe not. I do not believe that cable would get in that position itself. Because of the relatively short angle that it would have to make, considering the stiffness in the cable, the amount of bend necessary and the short distance between, I believe that is an impossible position considering the movement of the cable in normal conditions. [688—606]

(Testimony of J. M. Young.)

Q. That is an impossible position for the cable to assume if it has any care while operating?

A. Yes, while operating under its own force.

Q. Have you seen it in that position on the coal-conveyor of the Inter-Island Company?

A. I have seen it in that position.

Q. How recently?

A. That was about four days ago.

Q. How was it placed in that position; describe the method?

A. It was placed there by means of three crowbars, I believe it was, two—yes, three crowbars.

Q. Any one holding the crowbars?

A. Yes, sir; men were holding them.

Q. Four or five men? A. Yes, sir.

Q. Was it done in an instant, or did it require any length of time?

A. No, it was not done quickly. I suppose it took about six or eight minutes and was accomplished with some little difficulty, the cable did not readily assume that position.

Mr. DOUTHITT.—When was this?

Mr. SUTTON.—Four or five days ago.

Mr. DOUTHITT.—That is objected to as incompetent, irrelevant and immaterial, and I move to strike it out.

Mr. SUTTON.—Before your Honor rules, I desire to ask a question or two.

Q. Have you observed the cable in operation at the present time on the Inter-Island Company's coal-conveyor? A. Yes, sir.

(Testimony of J. M. Young.)

Q. In so far as its bending qualities and other causes necessary to put it in this position are concerned, is there any essential difference between that cable and the Roebling six-strand, three-quarter inch, nineteen-wire cable in use at the time of the accident?

A. No, there is no essential difference.

Motion denied. [689—607]

The COURT.—At the time this experiment was made, Mr. Young, was or was not the cable in operation? Was it stationary?

A. The cable was not in motion; it was stationary, but the weight had not been lifted, that is, the tension was on the cable.

Mr. SUTTON.—Mr. Young, it has been testified in this case that at the time immediately prior to the accident—by immediately I mean the very instant before the accident—Mr. Ward was standing in this position, one foot on the platform between the rails at the makai end of the conveyor, and his other foot resting on the end of one of the ties on the makai track pressing against the end of it in somewhat this position (illustrating).

Mr. SUTTON.—Leave out of the question the name of Mr. Ward, and say that a person.

It is also testified that *that* holding a crowbar in this position, I don't think that you can see from there?

A. Yes, I can see, I have got the angle.

Mr. SUTTON.—If I am wrong in this, Mr. Douthitt may correct me.

And that the individual was pulling on the crow-

(Testimony of J. M. Young.)

bar, the upper end of the crowbar. Let it appear that the base of the crowbar was at the base of the fifth pulley, in between, right by the corner where the lag-screw holds the face of the pulley or bed-plate of the pulley, the crowbar being inclined at an angle, the tip of the crowbar being declined in the direction Waikiki and the strain exerted on the crowbar being a pulling strain.

Mr. DOUTHITT.—He was holding it in position, not a pulling strain, a holding position, while the others were pulling as I understand.

Mr. SUTTON.—Holding it in a holding position with the two hands at the top of the crowbar. Now, will you state, Mr. Young, what, in your opinion, would be the effect upon that person in [690—608] case the crowbar slipped at the point where it was held, or that the cable itself slipped?

Mr. DOUTHITT.—We do not think this is a proper subject for expert testimony.

Objection overruled. Exception.

Mr. SUTTON.—What would be the effect upon the man in case of the slip of either the cable or crowbar in that position?

A. Well, the effect obviously there would be to throw the man back toward the center of the cable-way; it could not be otherwise, because it is one of the fundamental laws of motion that the resulting motion is in the direction in which the force acts. Now, he is impelling himself in this direction, exerting himself, therefore, if the bar should slip at the bottom there on the pulley or on the cable the result-

(Testimony of J. M. Young.)

ing force would operate and he would be thrown toward the center line of the cable-way.

Mr. SUTTON.—Indicating by the center of the cable-way what, this platform?

A. Midway between two tracks, throw him in that direction.

Q. It has been testified, Mr. Young, in this case, by other witnesses, that a man who was standing in this position facing makai, his feet astride of the track, his right foot on the Ewa side of the track, his left foot on the Waikiki side of the track, the point where he was standing along between—about between the fourth and fifth pulleys of the series of eight to which we have referred and that he had the crowbar in this position (indicating)? A. Yes.

Q. The top of the crowbar was toward Ewa, the face of the crowbar was between the fourth and fifth pulleys, and the force exerted was towards Waikiki, that is the force exerted on the top of the crowbar was the pulling towards Waikiki; now, what effect, if any, would there be in case the cable slipped off the four pulleys on the makai end of the eight?

A. Is the [691—609] weight raised or lowered?

Q. The weight is not raised, it is in its normal position?

A. Well, the effect of a slippage there would be to give the cable a chance to straighten out between the tangent of that group of pulleys and some point down here such that its position would be moved over.

Q. By moved over, in what direction would you say, makai, Ewa, mauka or Waikiki?

(Testimony of J. M. Young.)

A. It would go Ewa and would go with quite a snap, I should say, with this weight attached to it.

Q. And assuming that he was standing in that position with the crowbar, as I have described, and the cable slips, what, of anything, will the cable do in relation to the crowbar?

A. Well, it would—depending on whether the crowbar slipped. If it slipped at the bottom, why the bar would go over this way; however, if it slipped up the bar then the bar would go over this way and the cable would probably strike the man.

Q. Where?

A. Strike his leg, I should say, if he straddled it, it would strike his leg inside, of course.

Q. And his right leg was on the Ewa side of the track and his left leg on the Waikiki side of the track, which leg would be struck on the inside?

A. It would strike the leg on the side.

Q. Which leg? A. Which way was he facing?

Q. Eastward.

A. Then it would strike his right leg.

Q. What effect, if any, would that have upon the man, the slipping of the cable and striking the leg?

A. Why, it would throw him off undoubtedly, throw him off and undoubtedly seriously hurt him.

Q. Off the side? A. Off the side.

Q. In which direction? A. Ewa.

A JUROR.—Would that box immediately take up the slack [692—610] that was occasioned by the displacement around the four makai pulleys of the series of eight?

(Testimony of J. M. Young.)

A. Do you mean instantaneously?

Q. Yes, almost instantaneously.

A. Well, with a bight in a cable with that much pull out of alignment, say, perhaps, two or two and a half feet the effect of the weight would be to take it up as quick as you get motion, of course, it would not be instantaneously, it would not be like that, but it will do it, though, in a second.

A JUROR.—Mr. Young, suppose there are four or five cars upon this end of the conveyor?

A. On this side?

Q. There are four or five cars attached, say empty cars, and that cable slipped off there as Mr. Sutton described, would it snap it up that quick to take a leg from under the man?

A. Yes, I think it would undoubtedly.

Q. The weight would have to pull all those cars back while they were loaded cars and empty cars both?

A. Well, no, not necessarily; there is a certain amount of give and take on a cable-way and it is not a gearing that is positive, it is not like a gear you know that meshes in with another gear, there is a certain amount of slipping and movement can take place and if the cable is released at that point it undoubtedly will fly over whether cars are gripped to it or not. In fact the tension there would be sufficient to cause a slight slipping going on constantly. You understand that these grips do not take up the car immediately; the grip is tightened and the car begins to move slowly, the cable slipping through the

(Testimony of J. M. Young.)

grip and it is not a sharp taking hold.

Q. If the engine is supposed to be stopped, wouldn't they have to turn that engine to turn the drum the way that you have got there—the one they have got there would have to move all the cars to slip the cable in the grip and turn the engines?

A. Yes, turn the engines down there, but you understand a [693—611] very small movement down there, would do it, it ~~does~~ not take very much.

Q. A small movement of the engine, a backward motion? A. Yes, sir.

Q. What was the matter with the engine at that time?

A. The engine is stopped; is that correct?

Q. The engine was stopped?

A. Yes, that is the way you put the question.

Mr. SUTTON.—Then, as I understand you, the tension on the pulley at this point on the eight pulleys, the tension to the cable is on the inside of the circle which at this point is the outside of the track?

A. Yes.

Q. And the tendency of the cable in case it came off all of the eight pulleys would be for it to assume a straight line and that straight line would be at a point on the outside of the track? A. Yes.

Q. On the Ewa side?

A. Yes. If that were not true the pulleys would not be placed in that position. They are placed in that position for that purpose, to resist that kind of set.

A JUROR.—Mr. Young, do I understand you to

(Testimony of J. M. Young.)

say that the box here would take up the slack at the makai end there in about one second?

A. It will immediately take all of it up. When a large slack occurs like that, the rope will fly over very quickly. It will not come to a dead stop, it will fly over again and then get back comparatively like the string of a fiddle. There is a certain amount of slack there all the time.

Q. The cable if off the pulleys there, how long would it take for the box to take up the slack from the makai end?

A. Oh, it would be in a few seconds.

Q. That box would take up the slack of twenty-five hundred feet of cable in a few seconds?

A. Yes, sir. [694—612]

Mr. SUTTON.—If a man was standing in the position I have indicated astride of the track and astride of the cable and was struck by the cable would it require a large amount of tension in the cable, a great blow, to disturb the man's balance in that position or a slight amount?

A. Well, I say a man balanced up in that position would not take a great force to unbalance him and the cable in flying off would certainly exert sufficient force for that.

Q. Mr. Young, I think you have stated, I am not sure, the effect upon the broken wires in the cable when the broken wires come in contact with the pulleys on the curves and also the effect of the broken wires on coming in contact with the shoe part of the grip on the various cars, assuming the

(Testimony of J. M. Young.)

cars to be at rest and the cable sliding through the shoe. As I recall your answer it was that the broken wire when on coming in contact with the pulleys on the curves, be flattened and that on the side or at the point where they came in contact with the pulleys and that in the shoe they would also be flattened out. Now, what would be the effect upon the broken wires sticking out from the cable by coming in contact with the drum?

A. The drum of the engine?

Q. Yes, the drum of the engine?

A. Why, they would be smoothed out in much the same way. They will always cut and scratch up and abraid the surface of the iron drum.

Q. Which would come off the more quickly from the pulleys on the curve, a new or old cable?

A. I believe—

Mr. DOUTHITT.—He has answered that?

A. I think I did. However, I have no objection to answering it again.

Mr. DOUTHITT.—Under what circumstances?

Mr. SUTTON.—Under ordinary circumstances.

Q. Assuming those things to be the occasion for the cable coming off, would it come off more easily with an old or new [695—613] cable?

A. I think a new cable could be removed more readily than an old one.

Q. In your opinion, Mr. Young, would a cable with wires broken and sticking out at intervals throughout the length, sticking out at a distance say anywhere from one-sixteenth to an inch be fit for

(Testimony of J. M. Young.)

use in this conveyor?

A. If that is the only thing that is the matter with it, I should say yes. That would not invalidate its usefulness.

Cross-examination of J. M. YOUNG.

Mr. DOUTHITT.—Then there would be no necessity for throwing it away, Mr. Young, a cable like that or replacing it with a new one then, provided that the dollies and the pulleys were all right, other things being equal?

A. Well, you understand that these—this effect is a preventive thing, first there is one wire broken, then another one, another one and another one and finally there is a point reached where the wear on the pulleys, the dollies, the grips becomes considerable and they are not able to retain the cable in use because of the wear.

Q. Then a cable like that could be used with wires sticking out throughout its entire length. This cable was twenty-eight hundred feet long, Mr. Young. A cable of that kind could be used for several months, could it not? A. Yes.

Q. It could? A. Yes.

Q. With a perfect degree of efficiency?

A. Except the wear on the pulleys.

Q. Excepting for the wear on the pulleys?

A. Yes, sir.

Q. Otherwise it could be used with perfect efficiency for [696—614] a period of several months?

A. Until the cable were reduced in diameter so that the grips would not operate properly.

(Testimony of J. M. Young.)

Q. That would take some time, wouldn't it?

A. Yes, it would.

Q. About how long?

A. Well, I should say that the economical life of a cable working under those conditions would probably be about eighteen months.

Q. Then, if this cable was in use for ten months, Mr. Young, the cable was perfectly good for eight months longer, for economical use?

A. In general terms I should say, yes.

Q. Providing that it had wires sticking out all the way from one-sixteenth of an inch up to a quarter of an inch—up to an inch throughout the entire length? A. Provided, did you say?

Q. If it had those wires sticking out?

A. Well, I should answer that in this way that it would be useful in spite of the fact that it had the wires sticking out.

Q. Yes, but I am asking you aside from the pulley question—from the question of the pulleys which you say wear down by using a cable of that description. Aside from that, you having said that the life of a cable according to your observation was eighteen months if the cable had been in use ten months it was good for the other eight, was it not?

A. Yes, it is reasonable to expect that it would have that additional life.

Q. Will the grip slip on a new cable more readily than on the old one?

A. Well, that would depend somewhat on the condition of the grip. If the grips are in perfect

(Testimony of J. M. Young.)

condition, there will be very little difference.

Q. Well, don't you know, Mr. Young, that the grips on an old cable will take hold quicker than it will on the new, due to the obstruction of the wires that come out?

A. Depending altogether on the condition of the grips.

Q. Depending altogether on the condition of the grips. Now, [697—615] I am calling your attention—as a matter of fact there is a difference between the condition of the cable where the wires are projecting and the cable which is worn smooth, is there not? You have seen cables that were worn smooth, very smooth, it would be worn down here, worn down there and so on as it goes around?

A. Yes, sir.

Q. That cable would not cause the wear of the grips as much as a new cable would—on the pulleys I mean, a cable which was worn smooth?

A. Well, there is a point there where the wear is less, yes.

Q. How is that?

A. There is a point at which the wear is less and I think the period at which the wear is least is when the cable is perfectly smooth.

Q. The wear is least when the cable is perfectly smooth? A. Yes, sir.

Q. Then, that cable for example, accomplished that purpose better than a perfectly new cable, a cable which had been worn down by use?

A. Yes, I should say that a cable would wear the

(Testimony of J. M. Young.)

pulleys most when it is put on new than in its later period of life.

Q. A cable that has been worn perfectly smooth would that increase the wear on the pulleys?

A. No, I think not.

Q. It would not? A. No.

Q. But a new cable might, you say, increase the wear on the pulleys?

A. Well, I think the wear would be greater, in fact, I know it is greater, with a cable, the surface of which is rough?

Q. The surface of which is rough? A. Yes, sir.

Q. Do you mean that this is a rough surface?

A. Yes, that is rough, it is corrugated.

Q. Do you know the average pulling strength of a cable? A. Yes. [698—616]

Q. What is it?

A. Why, it depends altogether on the factor of safety which is employed. Ordinary use in cable ways we allow a factor of say three or four or five for hauling a load. With the Hunt cable supporting the load and a Roebling, the factor would be less.

Q. What is the ordinary use to which a cable such as was used on this conveyor, could be subjected?

A. Well, I should say that the strain would probably vary from a thousand to fifteen hundred pounds.

Q. I don't mean that, how many tons, for example, is capable of being carried over hauling—the cable capable of hauling, working?

A. Well, as a general rule the load which is pro-

(Testimony of J. M. Young.)

pelled is about one-fifth of the propelling force.

Q. Well, I am not asking you that, Mr. Young?

Mr. STANLEY.—Had you finished?

A. No, I had not quite finished, however, I am willing to be interrupted.

Mr. DOUTHITT.—I don't think that you quite get me. How many pounds would a cable such as the one on this coal-conveyor, *capable* of hauling just exactly as this was done, how many tons rather?

A. Well, that cable before it was worked, in a new condition, would be capable of standing a stress of say forty thousand pounds. In accordance with the usual rules for such work it would exert a tractive effort on a load of cars, yes, a string of cars, and the gross weight of that string of cars would be approximately five times the forty thousand pounds or roughly speaking, two hundred thousand pounds or one hundred tons, so that that cable would be capable of moving a dead load of a hundred tons, that is, if you were designing a cable, those are the figures you would have to go back to.

Q. I did not mean that, Mr. Young, I did not mean how many tons that it would be capable of hauling at one particular time, but I mean if you used a cable every day or used it for [699—617] six or eight or ten months or a year, how many tons would be the carrying capacity, how many tons could it haul before being discarded as useless?

A. Oh, I should say that that cable ought to haul about one hundred or one hundred and twenty-five thousand tons, something like that.

(Testimony of J. M. Young.)

Q. About a hundred or a hundred and twenty-five thousand tons. And that was a Hunt, a Hunt coal-conveyor and the Hunt cars were being used on it and the Hunt tracks were being used. Don't you know Mr. Hunt—Mr. Young, that Mr. Hunt gives the life of a cable five months with a carrying capacity, an entire carrying capacity of one hundred and fifty thousand tons?

A. Well, I know that there are certain tabulated data published by the Hunt Companies, but I was not aware of the exact figures, I had not looked them up especially.

Q. Yes, but you were employed by the Hunt Company, were you not? A. No.

Q. I thought you said that you had been employed by the Hunt Company?

A. No, I did not say that.

Q. And you are not aware of the fact that Mr. Hunt, in his work, makes the statement that each cable handles about one hundred and fifty thousand tons of material and will last about five months?

Mr. SUTTON.—The witness has stated that he did not know anything about what was in Hunt's catalogue.

Mr. DOUTHITT.—Is it a fact, Mr. Young, that a cable such as in use upon this coal-conveyor, is only capable of carrying one hundred and fifty thousand tons, hauling one hundred and fifty thousand tons and is good for only a period of five months, is not that so?

A. Well, that is not the statement that I made.

(Testimony of J. M. Young.)

It is my opinion that a cable of that kind might be reasonably expected to last say eighteen months under conditions in which it is being used here, and that you might expect to [700—618] move about one hundred and twenty-five thousand tons on it for an average. It might move less or might move more, depending on the way the plant was managed. Whether the cars were full or not, and they were overloaded, all matters of elaboration, adjustment of the cable way and a number of other factors that affect its operation.

Q. All of these things have a certain effect and are a factor in the life of a cable, are they not?

A. Yes, sir.

Q. And then when you made the statement that the life of the cable was eighteen months, you meant that with the very best care and very best treatment it ought to last eighteen months?

A. Well, I mentioned that as a reasonable expectation.

Q. That is a reasonable expectation. You would be surprised, would you, Mr. Young, if the cables down there had only lasted for eight months, would you?

A. Not at all, not the slightest.

Q. You would not?

A. That would not surprise me at all, because there is a variation in the manufacture of articles of that kind and a cable of one manufacture might last twice or three times as long as the other, a cable looking just like it, and a cable which you could not tell the difference.

(Testimony of J. M. Young.)

Q. Then, there is no stated or fixed way by which the life of a cable might be judged or stated?

A. There is no exact rule, it cannot be exactly shown, it cannot be estimated with any exactness.

Q. One cable may be good enough to last five months and another cable run along for fifteen months?

A. Well, the five months I don't altogether agree with you on that point. I think Mr. Hunt probably in making that statement, referred to continuous operation. Where a cable is in use intermittently they would naturally last longer.

Q. Yes.

A. Of course, you can easily see that [701—619]

Q. Certainly.

A. Well, that is the point. I presume Mr. Hunt made a power-house where coal was being supplied to a set of boilers operating say twenty-four hours a day. This coal-conveyor operated continuously.

Q. Yes, but, Mr. Young, the question we will eliminate the five months then, it would be perfectly natural to expect one cable to only last eight months we will say and you might find a cable to last fifteen months? A. That is my opinion.

Q. So, therefore, there is practically no fixed standard so far as the life of a cable is concerned only from actual experience as you see them installed?

A. Well, if we are considering the two cables, say first, we place one, a crucible steel cable, six strands, nineteen wires to the strand, on a cable way and

(Testimony of J. M. Young.)

operate for twelve months constantly and remove it? A. Yes.

A. It will be perfectly reasonable to expect a similar cable of the same manufacture, of the same characteristics, identical in every way to last that same length of time. I agree with you on that.

Mr. DOUTHITT.—There is only one way of telling, by the installation. The only thing that you can reasonably expect, Mr. Young, is you would reasonably expect of a similar cable, that is the only thing that you can state, is it not, with directness?

Objected to as already asked and answered.

Q. Do you understand the question?

A. Well, I have answered the question already, you have twisted it around into another shape. I have already answered the question.

Q. It is only what you might expect, then, from comparing one cable to another?

A. Let me give you an illustration.

Q. I am asking you that.

A. Why, yes, it is a matter of reasonable expectation, for this reason that conditions are changing all the time. For example, one of the operatives might use a crowbar to shove the cable around for some purpose and in [702—620] process of the work he might break some of the strands in the cable and weaken it and fray it out, and then again the splice of the cable may work loose. You understand these cables, these endless cables, they are put together by splices in the middle and those splices give trouble, the ends come out and affect the cable that way.

(Testimony of J. M. Young.)

That might affect the life of the cable if there are many factors which affect it.

Q. What is the weight of a cable such as it used on this coal-conveyor of a Roebling cable, three-quarters of an inch in diameter, nineteen wire, six-strand, steel cable, twenty-eight hundred feet long?

A. I can figure it out for you in a few minutes, I do not carry those facts in my head. Well, I can answer that in this way—

The COURT.—Give it to counsel by the foot and he can figure it for the twenty-eight hundred feet.

A. The weight of a bar of wrought iron or steel an inch square, an ordinary foot inch is three and one-third pounds. Now, I would say that that was approximately—that that is approximately three-eighths of a square inch in cross section, so multiplying three and four-tenths by three-eighths that ought to weigh about approximately a pound to the foot.

Mr. DOUTHITT.—A pound to the foot?

A. About that.

Q. We will say about that. Then the entire weight of that cable would be twenty-eight hundred pounds? A. Approximately so, I should say.

Q. Do you know the capacity of each one of these cars, carrying capacity?

A. No, I do not, probably—they vary quite a good deal, you know. I guess that is probably three or four thousand pounds.

Q. Well, do you know the weight of the car?

A. That would probably be also in the neighborhood of five or six thousand pounds.

(Testimony of J. M. Young.)

Q. Weight about three tons, each car loaded?

A. Loaded [703—621] about that I should say.

Q. Loaded with coal about three tons? You made the statement here on direct examination, Mr. Young, that if the weight were raised that you would observe the slacking each side of the weight, did you not? A. Yes, sir.

Q. Did you mean that when the cars were loaded or unloaded?

A. Well, I think that would be the condition in either case.

Q. Gripped or ungripped? A. Yes.

Q. Either gripped or ungripped? A. Yes.

Q. How do you know that that weight weighed nine hundred or a thousand pounds?

A. Oh, I know that from my knowledge of such matters.

Q. Where did you first see it?

A. This particular weight?

Q. Yes.

A. Oh, I must have seen that particular weight five years ago, something like that.

Q. Five years ago? A. Probably six.

Q. Did you go down particularly to examine it as to how much it weighed? A. No.

Q. Then you are just simply estimating?

A. Yes.

Q. It may have weighed only five hundred pounds?

A. Well, I doubt very much if the cable-way would have operated satisfactorily with that weight.

(Testimony of J. M. Young.)

Q. Mr. Young, I will ask you as a matter of fact if the purpose of that weight is simply to take in the slack as the cable goes around the drum, is not that the purpose of the weight?

A. That is one of them, yes.

Q. That is one of the purposes of the weight and the main purpose of the weight, is it not, it is the automatic taking in of the slack?

A. Yes, sir, you can state that I think.

Q. That is the main purpose of the weight?

Q. That is one of the features of the Hunt patent.

[704—622]

Q. That is one of the features of the Hunt patent. And don't you know, Mr. Young, that that weight was not in use five years ago?

A. Why, as I stated, I visited the cable-way five years ago and it was a Hunt cable. I did not go around to examine all these little details minutely and I did not go over it with a microscope to examine each little detail on it. I presume, though, it is working there, they usually are.

Q. And in your opinion—did you look into the box to see what was in there? A. No.

Q. You don't know what was in the box?

A. Very likely there was broken stone or sand or car wheels or something like that. That is what is usually put in.

Q. And a five hundred pound weight there would be capable of taking in all the slack necessary at that box, wouldn't it?

A. I wouldn't like to make that statement, no.

(Testimony of J. M. Young.)

Q. Well, what do you mean?

A. I mean just what I said, that I think the weight of the box was probably in the neighborhood of nine hundred or a thousand pounds.

Q. Well, now, would a box—would a box with only five hundred pounds weight in it be capable of performing the functions required of it, namely the automatic taking in of the slack?

A. It might to a limited degree, I would not like to guarantee its satisfactory operation.

Q. When the car is being operated and the cable in passing over here, which way does the weight go, up or down, when the car is going along?

A. When the slack is being taken up the weight comes down and when cars are being gripped and the strain is put on the cable the tendency is to lift the weight up.

Q. When you grip the car up here after ungripping it, after you grip the car you get slack, don't you? A. There will be a little bit of slack, yes.

Q. Where does the weight go, up or down?

A. It would tend [705—623] to drop in order to take up the slack.

Q. You said up a little while ago when you gripped the car, you said that the weight would go up?

A. It might, yes, it all depends altogether on whether it is down where the car is. You understand one of these cable-ways is rather a complicated piece of mechanism and a person that knows nothing at all about it is apt to form an erroneous impression. You have got to study it; it is rather a

(Testimony of J. M. Young.)

complicated piece of mechanism.

Q. Let us study this conveyor, Mr. Young. This cable comes down through this shaft as you say here, then it is wound four times around that drum, is it not? A. Yes, about that.

Q. Well, as you observed it at the time?

A. About that.

Q. I want to be positive about this, Mr. Young, was it wound around the cable—how many times, if you know, around the drum?

A. About four times.

Q. Then it is taken up around this sheave as you see it here, coming down around the sheave of the weight, then up through another sheave and through the floor out in the same direction? A. Yes, sir.

Q. As the hauling cable, the same direction, is it not? Is not that correct? A. Yes, I believe so.

Q. I have not misstated it?

A. Ask it again, please.

Q. If I make a mistake, please check me. The cable I am illustrating on the model shown goes down the sheave at the point marked B, does it not?

A. Yes, sir.

Q. Then leading from the point marked B runs down under the coal-conveyor and is wound around the drum four times, is not that correct? A. Yes.

Q. Then it leads from the drum up to the sheave upon which the weight is suspended?

A. That is correct.

Q. And down through the sheave at the top of the weight and [706—624] up through the other

(Testimony of J. M. Young.)

sheave and then out at the point marked R we will say? A. Yes.

Q. Then it continues its way along in the same direction as the cable was going down to the sheave at the point marked B? A. Yes.

Q. That is absolutely correct. Now, I will ask you to try and explain, Mr. Young, by reference to the model how it is possible for the slack to be distributed on both sides, in a mauka direction and makai direction of this coal-conveyor by lifting that weight, taking into consideration the construction, stopping the engine, lifting the weight—

Mr. SUTTON.—No.

Mr. DOUTHITT.—Yes, lifting the weight. Just show us how it is possible to have slack distributed on the makai side, makai of the scale-house?

A. Well, the first thing, of course, that is noticeable on lifting the weight is that these cables must pass each other and tend to make the effective length of the cable greater and the process of lengthening the cable will produce slack.

Q. No, I mean—

Mr. STANLEY.—Let the witness explain, do not interrupt.

A. It is a very simple proposition, it is simply a physical fact, that is all.

Q. I know, Mr. Young, it is very simple, probably, to you, but it is not quite so simple to me. I must confess that I am a layman and I don't understand that.

A. You lift the weight.

Q. Yes, I lift the weight?

(Testimony of J. M. Young.)

A. That reduces the tension.

Q. Yes, it reduces the tension?

A. You understand that each little part of this cable is essential to the other parts.

Q. That is right.

A. Continue that process follow it down, knowing that a stress is distributed along any elastic [707—625] limit and you can follow the stress along the cable and that will distribute itself over the full length.

Q. With twenty cars loaded and coaled?

A. I don't care whether you have them all over the cable.

Q. Don't you know that the physical fact is that you would have to turn that drum back before you can get any slack because your drum is going to the right and your cable is going to the right just as I have them there, is not that a fact, Mr. Young?

A. Well, I don't admit that statement.

Q. Well, please explain, then, why you don't admit the mechanical construction?

A JUROR.—It is not clear to me how you can get the slack on both sides of that cable as it goes up on the platform there, because it seems to me a mechanical impossibility. Of course, I may be mistaken.

A. The facts of the case are these: Stopping the machine and taking a piece of chalk and marking on that cable putting a chalkmark on it and you can easily see on making a mark on the floor there and then lift the weight you will find that one mark will move this way and one move this way.

(Testimony of J. M. Young.)

Q. That the cable will pass over the drum or the drum will move sufficiently?

A. There is sufficient movement possible for that.

Q. In the drum alone of the steam engine the same as that weight?

A. Throughout the entire system. Understand that the drum does not need to move very much, it will move only a very little bit.

Q. Could you move that drum backwards a quarter of an inch backward on a steam engine?

A. Yes. And then the belt is not absolutely tight, it is not a positive connection.

Mr. DOUTHITT.—Q. With four turns around that drum it is not absolutely tight?

A. You will find the cable will distribute itself.
[708—626]

Q. The movement of the cable wound on that drum four times and wound in an opposite direction to the movement backward of the engine will give you movement forwards on the other side?

A. There is sufficient flexibility in this system to admit of this movement. That may not be quite clear to you, it is a fact, and if you wish to convince yourselves of it you could easily examine the cable-way. I think that would satisfy you.

Q. I think that is the only thing that would satisfy me. Now, Mr. Young, just go on on that point. In order to get your slack at this end of the conveyor, it would mean, would it not, if that slack was apparent on both sides of the scale-house, it would mean that the slack at the drum would have to revolve and

(Testimony of J. M. Young.)

go up in the other direction, would it not, is not that a mechanical factor from this very model?

A. Well, not necessarily, no.

Q. Well, how could it become, Mr. Young, if you will kindly explain to the jury how it could be done. I must confess that I cannot see how it could be done, but I am willing to learn.

A. Well, the explanation of it lies in this fact, that a cable-way is an extremely flexible mechanism and is the reason that a takeup of this magnitude is placed there. It is a takeup that will take up perhaps eight or ten feet of slack, that is why it is placed there because these variations do occur.

Q. But, Mr. Young, flexibility or no flexibility, you could not get that drum to revolve and take up the slack at that drum where it is wound around four times, you would have to make an air compressor out of your cylinder there, wouldn't you?

A. No, it would not be as bad as that.

Q. Just one minute, when you stop the engine, Mr. Young, as she drives she gives a start and gasps like that and it forms a vacuum in the cylinder, does it not, when you shut off steam?

A. Well, usually the leakage around a piston is sufficient [709—627] to obviate the formation of a vacuum.

Q. But when you stop—she is pushing backwards and forwards like that, the piston is inside the cylinder when you stop an engine suddenly it practically forms a vacuum in the cylinder, is not that a fact?

A. Well, if you shut steam off of the cylinder and

(Testimony of J. M. Young.)

the cylinder were airtight so that it would be impossible for air to get in it and you waited long enough for the steam to condense, then I will admit that there would be a vacuum or at least a partial vacuum formed.

Q. And in order then, Mr. Young, to start this business up, let *got* and get a slack on the makai side of the scale-house you would have to overcome that vacuum and make an air compressor out of it, wouldn't you, and have to send it around in an entirely different direction or it would be impossible to get it there?

A. Your own statement disproves itself, you speak of a vacuum.

Q. Yes.

A. You cannot make an air compressor of a machine when there is no air in position to be compressed, there is no air present. Therefore, you cannot compress it. It is supposed according to your statement that it is a vacuum.

Q. It is the suction, is it not, that stops the engine from continuing to revolve?

A. No, I would not like to say that.

Q. What is it then?

A. Why, it is the friction of this system's moving weights and cars on pulleys which causes it to stop.

Q. Is that all?

A. Well, it is the force of gravity acting on the cable.

Q. Is that all?

A. Those are the principal factors.

(Testimony of J. M. Young.)

Q. How is that?

A. Those are the principal factors. In fact the point that you make there I think you are somewhat overestimating, you magnify it, because it is nothing like as [710—628] great as you say. You understand that the valves of an engine when the engine stops open to the outside atmosphere and there is only one position there at which you can get compression. On examining an indicator card, I presume you are familiar with it, but I can show you with a piece of paper.

(Witness illustrates with pencil and paper.)

(Continuing.) Now, here is an indicator card, or rather a diagram of one. This would be the line of zero pressure; well, we might call it an atmosphere line for ordinary purposes. Assuming that this is a non-condensing engine, this is the point where the steam would be admitted to the cylinder, the steam would be cut off at that point. At a quarter or half stroke, it may be a quarter, a half or two-thirds from that point down here the steam expands and does work by virtue of its expansion or elastic force and the pressure drops correspondingly from this point which would be the point of admission. And on that system down there I will make a rough guess at it, a hundred pounds, it might be one hundred and twenty-five or one hundred and fifty, assume that is it, it would drop down at least down here, and say there is five point above atmosphere. Now, at that point the exhaust valve of the engine is opened so that the steam which is contained in the cylinder and

(Testimony of J. M. Young.)

which has expanded from this volume up to that volume may escape. The steam then begins to escape and it escapes from that point back to this point at which the exhaust valve closes and the steam can no longer escape being enclosed within the cylinder with a couple of valves to hold it. Then from here to there compression occurs and the compression within the cylinder of the steam engine is very, very small, it is purposely made that way so as not to absorb any of the power of the machine. Now, if a cylinder were made a little differently, if the valves were constructed on a different principle, such as, for example, of an air compressor to which you refer, you could then use up [711—629] the power in that way. But with a simple slide valve engine, such as this probably was, it is my opinion that you could not use it as an air compressor. I don't think that would be possible. It certainly would *not* a good illustration of an air compressor.

Q. Would it act as a vacuum pump?

A. There would be a slight tendency for vacuum to form between the point at which the exhaust valve closes and the point at which the admission valve opens. But you must take into consideration that that vacuum could not form until the temperature of the steam dropped down to about—well, it would begin to form at about two hundred degrees and the temperature of the steam being very much higher than that your vacuum could not form. The temperature of steam at ——— pressure is about two hundred and twelve and the temperature of steam

(Testimony of J. M. Young.)

under those conditions would be considerably higher than that according to the pressure it would be perhaps thirty degrees higher than that, you could have no vacuum. But if you cooled the steam by putting a jet of water on it and cooling it off on this small portion of the stroke, well, perhaps, from one-tenth or one-twelfth of the stroke you would get compression, but there would be factors that would militate against a vacuum there, because the valves would be operating backwards and would not be so tight as when operated in the other direction.

Q. What would be the force required to revolve that drum in an opposite direction to which it went?

A. With the weight lifted?

Q. Yes, with the weight lifted?

A. Well, with the weight lifted it would not take so very much to revolve it.

Q. This weighs twenty-eight hundred pounds, this cable does, Mr. Young, these cars weigh three tons apiece when they are loaded and one ton apiece when they are not loaded, when they are unloaded. What would be the force if there were cars on that [712—630] track, twenty cars on that track distributed at different portions around the conveyor, some loaded, some unloaded, what would be the force required to revolve that drum in another direction and cause the cable to reverse? A. The cars are stopped?

Q. I am going to stop those cars, I have rung the bell. A. And you have lifted the weight?

Q. And I have lifted the weight.

A. When you have lifted the weight the effect is to

(Testimony of J. M. Young.)

release the tension, is it not?

Q. The tension is, of course, released in the immediate vicinity of the weight, Mr. Young. The tension, of course, is released there, what would be the force required in the event that you lifted that weight with twenty cars around this track, some loaded and some unloaded, at different portions around the conveyor to reverse that drum and make it go in the opposite direction?

Mr. STANLEY.—That is assuming something that Mr. Young has not testified to.

The COURT.—He has not testified to the drum going in an opposite direction there.

A. That would be a physical impossibility because a cable is capable of transmitting force in one direction only, it is not capable of acting as a strut, it can only act as a tension member.

Mr. DOUTHITT.—I thought so and asked the question in order to get the slack at this end. *I* would be necessary, would it not, to make the drum reverse? A. No, not at all.

Q. Why, how could you get it?

A. Why, you understand with the weight lifted there a light slipping can occur.

Q. How can it occur in the makai direction. It would occur very easily, we understand, in a mauka direction toward the coal-yard but where could you get it in the makai direction away from the coal-yard, that is the point that I am after? [713—631]

A. You understand that it does not require very much lengthening in a cable to produce that?

(Testimony of J. M. Young.)

Q. How is that?

A. In the machinery such as you have referred to it does not require very much lengthening to produce slack. Say that is the railway and that is the conveyor, the cable comes over and sags down like that. Now, that may sag down a couple of inches there, in order to sag down a couple inches it does not involve very much change in the length of the cable.

Q. That is not the point I wish. You and I do not get at the right point at all the way it is constructed. I don't mean the sag where you are drawing it, but how is it possible the way this coal-conveyor was constructed to get that slack makai of the scale-house by raising the weight?

Objected to as already asked and answered.

Mr. DOUTHITT.—I will ask Mr. Young as a matter of fact, as we stand here and we look at that coal-conveyor and as we look at the way that cable is wound around the pulleys and the various sheaves, taking into consideration the direction of the cable, if it is not a physical impossibility to get a slack makai of the scale-house by lifting the weight, if it is not a physical impossibility? A. No.

Q. Is not that a fact, Mr. Young?

A. No, it is not.

Q. Will you kindly demonstrate how it can be so?

Objected to.

A JUROR.—I cannot understand it.

The COURT.—Kindly answer the question, Mr. Young.

(Testimony of J. M. Young.)

A JUROR.—That drum revolving pulling the cable produces friction?

A. Yes, sir, you know the action of that drum is somewhat analagous to the action of a nigger-head on the end of a shaft of a hoisting-engine. I presume you are familiar with that, most men are who have seen such things operate. In pulling [714—632] a rope with a nigger-head on the end of a hoisting end or shaft, the rope, you understand, is wrapped around the nigger-head and the nigger-head revolves and usually a man stands on the back side and maintains a slight tension on the back side of the rope and when he wants to stop pulling he releases it, doesn't he, that allows the rope to slip. That is a very delicate adjustment and it is possible there by slight variation on the tension of this mechanism to permit of slippage on that drum, in the same way that slipping can occur in a nigger-head of a hoisting-engine and I think that you will find that that is what happens.

Q. Is the weight of the cable heavy enough to slip?

A. Well, now, don't get confused on the weight of the cable, that has nothing at all to do with it. The weight of the cable is merely incidental and has nothing at all to do with this question because the weight of the cable is so extremely small as compared with the stress which that cable is capable of maintaining. The weight of the cable does not affect it materially, it is not a part of the program.

Q. What would make it go slack around the drum if not the weight of the cable?

(Testimony of J. M. Young.)

A. Releasing this cable and lifting that weight releases the tension on the back side does it not?

Q. Yes, but if you hold the cable, say mauka of the drum, you hold it there as in a vise and lift your weight it would not go back, would it?

A. Well, it is not possible for a cable to exert any considerable force by comparison, that is the cable itself would not revolve the drum.

Q. There is no tension on it when the thing is stopped, is there?

A. Well, there is a tension exerted until it comes to a dead rest.

Q. But if the cable is stopped there is no tension there is there?

A JUROR.—Mr. Young, would the drum itself revolve backward [715—633] or would the cable slip, the four rolls around that drum, would that loosen up as it were and loosen slip around that drum in order to allow that slack?

A. That is possible with the weight lifted in the condition that Mr. Douthitt has mentioned.

Q. The weight lifted would give it the slack back of the box, the rolls around the drum would loosen up?

A. It has a tendency in that direction, and it is possible, as I say, for the movement to occur.

Q. Not necessarily the drum would have to rotate backwards, too?

A. Slip around on it when the weight is lifted.

Mr. DOUTHITT.—The slack going in both directions, Mr. Young, from the drum?

(Testimony of J. M. Young.)

A. Well, Mr. Douthitt, that is what actually happens.

Q. I am asking you, I don't know anything about it myself.

A. I think you have demonstrated that. The facts are that the cable moves in both directions.

The further hearing of this cause was continued until 8:30 A. M. Tuesday morning. [716—634]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY, 1914, TERM.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY,

Defendant.

June 16th, 1914.

[Testimony of George P. Dennison, for Defendant.]

Direct examination of GEORGE P. DENNISON, called for the defendant, sworn.

Mr. STANLEY.—Your name is George Dennison? A. George P. Dennison.

Q. What position do you hold?

A. Superintendent, Oahu Railway & Land Company.

Q. How long have you been superintendent?

A. Since 1893.

Q. What experience, if any, have you had with

(Testimony of George P. Dennison.)

the use of machinery and appliances of a mechanical nature?

A. Well, in the way of supervision of such work which naturally falls to the superintendent, with this position as superintendent of the Hawaiian Dredging Company for years,

Q. How many years' experience have you had in this line?

A. Well, really, since 1889, I have been connected with this sort of work for the railroad company.

Q. You did not take a technical course at any institution? [717—635] A. No, sir.

Q. Mr. Dennison, have you ever had occasion to examine the coal-conveyor plant of the Inter-Island Steam Navigation Company here in Honolulu?

A. Yes, sir, I visited the plant last Saturday morning.

Q. And before that time had you ever observed the plant?

A. Not to go on the plant only as I passed along the street.

Q. Now, last Saturday morning, did you make any—in the presence of other persons, any experiment with regard to the cable, the drum and the other appliances on that coal-conveyor plant?

A. I watched with the others certain things that were done.

Q. Who was present at that time, Mr. Dennison?

A. Yourself, Judge Stanley, Mr. Sheedy, Professor Young, and the men who seemed to be running the plant, I don't know them by name.

(Testimony of George P. Dennison.)

Q. And this was Saturday morning?

A. Last Saturday morning, yes, sir.

Q. Did you make any observations in the engine-house where the drum is located upon the lifting of the weight and the stopping of the cable?

A. I watched the action.

Q. Describe, Mr. Dennison, if you can, what you observed with regard to the cable in connection with the drum upon the stopping of the engine and the lifting of the weight?

Mr. DOUTHITT.—That is objected to, the conditions are not shown to be the same last Saturday as they were on the 8th day of July, 1912.

Objection overruled. Exception.

Mr. STANLEY.—Do you recall the question?

A. You mean the drum, that which moves the cable?

Q. Yes.

A. Which is driven by electric motor by means of a belt?

Q. Yes.

A. And when the motor was stopped— [718—
636]

Mr. DOUTHITT.—There is another objection, we claim there is a difference between an electric motor operating the cable and steam power.

Objection overruled. Exception.

A. After the order given to stop the motor which was followed, the thing stopped, then there was an order given to lift the weight and as the weight was lifted the turns on this drum slackened up.

(Testimony of George P. Dennison.)

Q. The turns upon what?

A. The turns of the rope around this drum and released away from the drum.

Q. By the rope you mean the steel cable?

A. The steel cable.

Q. State whether you observed that it slipped on the drum.

A. We were looking at it when it was released and it seemed to release back from the roller part.

Q. Was there any attempt made by you or others to make any mark which would tend to indicate any definite amount of slack of the cable?

A. Yes, sir, there were chalkmarks made across the strands and opposite on the flange of the drum.

Q. With reference to those chalkmarks across the strands of the cable and on the base of the flange state what you observed.

A. The rope, the wire cable went back, that is opposite to the way it was being hauled by the cable.

Q. Was there any attempt made to turn the drum after the weight had been lifted?

A. Yes, it was turned by pulling on the belt pulley wheel, a large pulley wheel, the one which is driven by the belt.

Q. By electric power or what way?

A. By the hands. We turned the drum very easily with one hand on this pulley.

Q. What did you observe with regard to the cable on the drum when the drum itself would revolve?

A. It practically remained stationary, the drum turning within the turns of the cable. [719—637]

(Testimony of George P. Dennison.)

Mr. STANLEY.—What?

A. Turning within the turns of the cable.

Mr. SUTTON.—Now, calling your attention to the condition of the cable on the track near the scale-house was there any experiment made at that point to observe the effect upon the cable of raising the weight? A. Yes, sir.

Q. Describe that.

A. When the cable after we observed down below was started in operation again and running, then stopped.

Q. What, if anything, was done with reference to the weight?

A. They sung out to them to lower the weight before this was started up and the cable ran around then and stopped and marks were put across the two cables where they lie parallel alongside of each other, then on the floor opposite this and then the order was given to raise the weight and then the marks moved, the cable with reference to the marks moved.

Q. Can you indicate on the model approximately the position where these experiments were conducted. I call your attention to what appears to be the weight.

A. The marks were made somewhere in the vicinity of this scale-house. We put a chalkmark on the cable and on the floor under the cable without lifting the weight, and then on lifting the weight the cable moved away from its mark on the floor. The same thing occurred when the cars were attached and the

(Testimony of George P. Dennison.)

marks made, they made but a little difference. When there were no cars attached they moved about equal distances from this mark, about five inches. When cars were attached to the cable, the cable moved this way.

Q. Which way do you mean?

A. Assuming that to be the sea end of the model, this cable moved towards Waikiki as it were, mauka this list here about seven inches and the other about three inches, roughly, I did not measure them.
[720—638]

Q. After observing the motion at that point by lifting the weight, what, if anything, was done to the weight and the cable?

A. Well, it was started and stopped several times, sometimes with the cars loaded and run around, sometimes with them partly unloaded and later again with all the cars ungripped.

Q. And each time was a mark made?

A. Not each time, but several times, two or three times.

Q. Did you observe any particular difference between the extent to which the marks separated at that point on these different occasions?

A. When there were loaded cars and loaded and empty cars attached to the cable this movement was a little different than when the cable was simply running with all the cars detached.

Q. About how far apart would you say that these marks separated?

(Testimony of George P. Dennison.)

A. When there were no cars attached to the cable they moved about five inches, each way, moving about five inches from the mark on the floor.

Q. A total length?

A. Of about ten inches separated the marks.

Q. Thereabouts? Did you make any observation at this point on the coal-conveyor system indicating the eight pulleys at the makai end of the track on the Ewa side? A. Yes.

Q. Describe exactly what was done.

A. On the makai with the train going to the right on this right-hand track, going from here.

Q. The Ewa side?

A. As the model lies, not as the plant lies.

Q. What did you observe at that point, Mr. Dennison?

A. Well, we watched the cars go around this place and watched the cable traveling around there without cars attached and watched the action of the cable when they were told to stop the plant and told to lift the weight, and then, lastly, I tried to lift—lifted [721—639] the cable up and replaced it there.

Q. Now, state what you observed at this point that I have just indicated, what you observed at that point when the cable was stopped and the weight was lifted?

A. When there were cars attached there was a slight slackening of the cable but not as much as when there were no cars attached.

Q. By saying that there were cars not attached to

(Testimony of George P. Dennison.)

the cable you mean to say that there were cars on the track?

A. The grips were open and the cars were at rest when the cable was moving.

Q. How long a length of time; was any great length of time required before you observed slack at this point after the order to lift the weight was given?

A. No, it seemed to—apparently you could tell when they began lifting the weight by the sort of slackening of the cable. The men were out of sight, of course.

Q. When the grips of the cars were unloosened how much slack was observed after the weight had been raised?

A. Well, the cable where I took hold of it, the cable would slack so, slack between the pulleys or the horizontal rollers would about touch the floor or almost touch it, apparently touching the floor.

Q. Now, describe exactly what you did, Mr. Dennison, with regard to the cable.

Question withdrawn.

Q. How long a time would you say, Mr. Dennison, elapsed from the time the order was given to lift the weight until you observed the slack at this point?

A. Why, I did not particularly notice, but it was a very short time.

Q. A minute or two minutes?

A. Why, I should think not over a minute, perhaps a little less, if anything, what would seem to be the time to hook a tackle on there and haul up.

(Testimony of George P. Dennison.)

[722—640] I did not particularly note the time, I don't know that it was the same each time.

Q. Now, describe what you did at this point, Mr. Dennison, indicating again the makai end of the conveyor on the Ewa side of the track.

A. I stood about here where I could get hold of the cable before it passed around this first roller.

Q. You mean the first roller of these eight pulleys?

A. Of these eight pulleys on the turn, this first vertical roller, I gripped the cable there with one hand and pulled it probably, getting a little slack, then threw it clear of these eight pulleys lying there. This floor is a little different from what this model shows. You have it that way and then you take two hands and place it back.

Q. With the exception of your hands what other appliances did you use in taking this cable off and replacing it after the cable had been lifted on the pulleys? A. Nothing.

Q. With what power did you take the cable off the eight pulleys?

A. Why, I don't know, it did not take any particularly great effort to get it off, I could lift it quite easily.

Q. What about putting the cable back into position?

A. I took both hands. I could possibly do it with one hand but I did not want to get that grease all over my clothes, you see, to do it. It was more convenient to throw it around this end.

(Testimony of George P. Dennison.)

A JUROR.—Did you stand in the very same position to do the second operation, Mr. Dennison?

A. Perhaps I moved a little, I don't exactly remember, perhaps I did. The cable was very greasy and I didn't care to get it all over my clothes.

Mr. SUTTON.—When you performed this experiment the cable was at rest?

A. The cable was at rest.

Q. And the weight had been lifted?

A. The weight had been lifted. [723—641]

Q. And the grips of the cars had been released?

A. The cable had been running around the course at that time before it was stopped without the cars.

Q. By that you mean that the grips were released from the cars?

A. Yes, the cars were all standing at the various points around and the cable was running. They gave the order to lift the weight, that was apparently done, and I moved it and put it back.

Q. You speak of these cars being all around, could you indicate roughly the condition of the cars as to being loaded or unloaded?

A. Why, I think all the cars were loaded when the experiments were first began, or nearly all, if not all, and were banked along on a side, then they were started at fifty or thirty-five feet apart and sent around the long track at the other end and some of them passed over at the street near the boat-house, part of the cars were carried there, I don't know how many.

Q. At the time you performed this experiment at

(Testimony of George P. Dennison.)

the makai end of the conveyor, can you state roughly what portion of the cars were around at that point?

A. No, I did not notice, there were some of them at various places.

Q. Do you recall whether or not there were any cars between the makai tower and the mauka tower on the Waikiki track? A. This track here?

Q. Yes.

A. Yes, there were some cars there but I don't recall whether they were loaded or empties.

Q. And do you remember whether there were any cars on the Ewa track?

A. Yes, I recall there was one car somewhere about in this position.

Q. Do you recall where any other cars were at that time?

A. No, not particularly, we were standing looking down in that direction. [724-642]

Q. Do you know whether or not the entire cars were running around the track at the time?

A. During the experiment?

Q. Yes.

A. I don't know, I did not count how many cars were there but all the cars were in motion at one time, there were no cars standing around here, they had been released way out at the other end so that we could see.

Q. It has been testified in this case that immediately prior to the accident to Mr. Ward the cable was in this position, indicating that the cable was off the first four of the series of eight pulleys at the

(Testimony of George P. Dennison.)

makai-Ewa side of the cable way and in this position on the next four pulleys of that series of eight, thus, indicating on the model the position. State whether or not in your opinion it would be possible for the cable to get in that position.

Objected to as absolutely incompetent and irrelevant and Mr. Dennison not having been shown to be an expert.

Question withdrawn.

Mr. SUTTON.—Mr. Dennison, among the various operations that you have been connected with have you had occasion to use cables, steel cables?

A. Yes, sir.

Q. Of approximately the size in question here, that is, three-quarters of an inch steel cables?

A. Yes, sir.

Q. Larger or smaller? A. Both.

Q. What was the nature of that experience?

A. In various ways at the railroad company, which at one time owned a coal-handling plant very similar to this one, years ago, and in connection with dredgers very extensively on various forms of dredgers.

Q. Did you have any connection with that coal plant of the O. R. & L. Company? A. Yes.

Q. What was that connection?

A. I superintended and I did a great deal of work personally in its operation.

Q. How many years experience would that be, Mr. Dennison. [725—643]

A. Well, the coal plant was in existence about

(Testimony of George P. Dennison.)

seven, eight or nine years, but it was used comparatively little.

Q. Now, Mr. Dennison, will you answer this question that I last asked and passed?

Mr. DOUTHITT.—The question is objected to, the witness has shown no qualifications.

Objection sustained. Exception.

Mr. SUTTON.—Mr. Dennison, state what if any contrivances or appliances there were in this coal-conveyor plant of the O. R. & L. Company with which you were connected in order to confine the cable in approximately the middle of the track around the curves? A. It had vertical pulleys.

Q. Calling your attention to Defendant's Exhibit 5, I will ask you whether or not the vertical pulleys to which you refer were similar or bore any resemblance to these?

A. They were vertical pulleys, they were very much smaller in diameter, perhaps not over half the diameter of this one you pointed to, and somewhat higher from the flange up. The general shape of the side of the pulley and flange was about the same as this one.

Q. And on the curves were the pulleys spaced approximately the same distance apart as these?

A. No, they were very much further apart.

Mr. SUTTON.—Now, we submit that the witness is shown to be familiar with plants of similar construction.

Mr. DOUTHITT.—That is objected to.

Objection sustained.

(Testimony of George P. Dennison.)

Mr. SUTTON.—Have you had any other experience with any other cable-ways, Mr. Dennison?

A. No, sir.

Q. Have you had any experience with cables in connection with dredging operations?

A. Not in connection with work of this nature.

Q. In connection with work of any kind?

A. Yes, where [726—644] the cable was pulled up by winding upon a drum.

Q. Have you had any experience in the bending or stiffness of cables, have you observed the possibility of bending cables?

A. Well, in operation they would naturally bend.

Q. In operation, have you had any experience used for the purpose of hauling material where the weight of the material hauled or articles hauled have been suspended from a cable?

A. Cable-ways.

Q. Have these cable-ways been operated by other cables, that is, for hauling back and forth, have these other cables used for hauling the weight so suspended been operated by mechanical means?

A. Yes.

Q. Went around drums or similar appliances in order that motion might be applied to the cable?

A. Yes.

Q. Have these cables that you referred to been around about sheaves or pulleys?

A. Over sheaves and blocks.

Q. Where has this experience of yours been?

A. It has been—my last experience of that kind

(Testimony of George P. Dennison.)

has been in the erection and construction of steel bridges for the Hilo railroad.

Q. On the Island of Hawaii, in this territory?

A. Yes.

Q. How wide were the places where the cables were suspended?

Objected to as immaterial.

Objection sustained. Exception.

Mr. STANLEY.—We offer to prove that the opinion of Mr. Dennison—

Mr. DOUTHITT.—The offer to prove, we submit, should not be made before the jury.

The COURT.—Gentlemen, you may retire in order that counsel may present his offer of proof.

Mr. SUTTON.—We offer to prove by Mr. Dennison, whom we have shown to be a man experienced in the use of cables of a similar nature, who has had experience with a coal-conveyor plant where the system employed was similar to that in operation at the [727—645] defendant's coal-conveyor plant upon which Mr. Ward was hurt, that in Mr. Dennison's opinion it would be impossible for a cable situated as the one in use at that time and similar to the one in use at the present time to assume the position testified to by one of the witnesses in this case, to wit: that at the extreme makai end of the conveyor on the Ewa side and on the series of eight pulleys at the commencement of that curve that the cable was out of its position on the first four pulleys, in fact, on the opposite side of those pulleys and in a position on the second four pulleys of that series of

(Testimony of George P. Dennison.)

eight, the cable between the fourth and fifth pulleys being down between the pulleys and either on the flange or near the top of the flange.

Order of proof denied. Exception.

(Order of Court made after jury returned to court.)

Cross-examination of GEORGE P. DENNISON.

Mr. DOUTHITT.—Mr. Dennison, are you a practical mechanic?

A. By that do you mean did I serve my time as a mechanic?

Q. Yes. A. No, sir.

Q. And you are not a mechanic, as I understand?

A. I don't know whether I could qualify as a mechanic and actually work with tools or not. Some tools I can use, some I cannot. I never served my time at any trade.

Q. Never served your time? A. No, sir.

Q. And the only time, as I understand you, that you were down here at this coal-conveyor was on the Saturday, last Saturday?

A. Yes, up around on the coal-conveyor.

Q. Upon the coal-conveyor?

A. Yes, sir, I do not remember ever being there before. I might have possibly been around there and walk over from the Marine Railway where we used [728—646] have dredgers, stop and watch the cars going back and forth but I never observed the plant at all. I have been on the wharf where I have had scows lying at the end of the wharf at various times, but I do not remember ever being up on

(Testimony of George P. Dennison.)

the plant before Saturday.

Q. Now, as you say, Mr. Dennison, that when the cable was stopped when the motor—it is an electric power, is it not, or was?

A. It is an electrical motor, or was, Saturday.

Q. When the motor was stopped you say that you observed a certain slackening up of the cable at the drum?

A. When they began to lift the weight just as it stopped.

Q. Just as it stopped?

A. In lifting the weight—

Q. How much—

Mr. STANLEY.—Let the witness finish.

A. When the weight was lifted the cable was slack, not when it just stopped.

Mr. DOUTHITT.—When the weight was lifted there was slackening at the drum, you say?

A. Yes.

Q. On the drum?

A. The turns around the drum released from it coming away from the drum.

Q. How much?

A. Hauling apart as shown by the chalk mark on the first turn on the cable an inch and a half.

Q. An inch and a half?

A. And as it went to the slack from the drum there was a little more than that, the turns did not each slack the same, it was slackening away.

Q. Now, you observed, did you not, the cable in operation at the drum? A. Yes, sir.

(Testimony of George P. Dennison.)

Q. The drum was turning in a mauka direction or turning towards the right, was it not?

A. Well, it depends on how you stand to look at it.

Q. Well, looking at the conveyor, which way was the drum running, right or left, as you looked at it?

A. We stood in [729—647] various places.

Q. Which way was it traveling, mauka or makai?

Mr. STANLEY.—The witness says it all depends which way you are looking at it.

Mr. DOUTHITT.—Which way was the drum running, Mr. Dennison, you understand whether it was running makai, the makai end of the coal-conveyor or whether it was running in the mauka way?

A. Standing on the water side of the wharf, the slip side of the wharf, facing towards the mountains, it was turning in this direction the fold going on the bottom of the drum.

Q. That is to say, it was running in a mauka direction?

A. The drum was turning in a mauka direction.

Q. And as the cable came down from the point, the sheave marked B? A. Yes.

Q. The drum going in that direction, the tension was on that particular portion of the cable leading down from the point B down to the drum, that is correct, is it not? A. Yes, sir.

Q. Now, you say that when the weight was lifted the cable slacked up on the drum an inch or an inch and a half, do you say?

A. About an inch or an inch and a half at the time it slacked.

(Testimony of George P. Dennison.)

Q. In all four cables, four turns?

A. This first one, the one in tension, slacked the least.

Q. Yes.

A. And going on over the last one where the weight was being released the strain was being removed would slack more.

Q. And all four of the turns did not slack up at that drum, did they?

A. All four of the turns slacked up, yes.

Q. How much?

A. An inch to an inch and a half, you see the mark was across the strand like that and they sort of go together, the first one traveling, and as it has to turn away from the one that lies there, that is the one that has the hauling [730—648] part on the top of the drum you make a mark across right on the outside here, you make a mark on the flange and as you release that weight these turns going together and this one, each one turning a little less than the one that has the most slack, the one that gives from each way will travel a little more here so that the thing will be in this direction if you have the weight lifted up. If you take your hand and ease it up there will be more, here, there is considerable slack there, you can ease it off.

Q. The slack then would be after it leaves the drum it goes down to point B on the model?

A. Yes, sir.

Q. To the drum? A. Yes, sir.

Q. After being wound around four times it goes

(Testimony of George P. Dennison.)

up to the sheave that holds up the weight?

A. Yes.

Q. Now, the slack would be in here?

A. Yes, inside.

Q. That is the slack that is taken in on the tension, you get that slack that is taken in from the tension?

A. No, I think it is entirely, well, practically all from the lifting of this, from the weight, after you lift the weight you can see it.

Q. After you lift the weight you can see it.

A. You can see it coming in, yes.

Q. And you say the slack at the drum was about an inch to an inch and a half?

A. Drawing away from the drum it released the drum, it released the drum so that the drum would turn freely.

Q. An inch and a half away from the drum?

A. Not an inch and a half, I say the movement of the turn on the drum would be that.

Q. The movement of the turn on the drum?

Mr. STANLEY.—The movement of the cable on the drum?

A. Yes, sir.

Mr. DOUTHITT.—But the movement of the cable on the drum?

A. Yes, sir. [731—649]

Q. Then all you got there was an inch and a half slack there?

A. If you overhaul it after lifting the weight you

(Testimony of George P. Dennison.)

would get more slack than that, by lifting it around with your hands.

Q. How much more slack would you get than that?

A. Three or four times more than that, it depends on how high you lift the weight. If you lift it away up, and overhaul it you get more than that.

Q. Then, as I understand, the cable was not sticking out from the drum, but it had simply moved in its position around the drum?

A. It sticks out a little bit in order to increase the diameter.

Q. How much?

A. Perhaps a quarter of an inch, something like that.

Q. Then when you got up here on the top of the coal-conveyor after seeing that you noticed the cable shifting its position?

A. After the thing started again, before we went up here the weight was still down and the machine started in operation again, then it was stopped.

Q. Just a minute, please, Mr. Dennison. After you had observed the position of the slack as you have testified, at the drum upon lifting the weight did you go on further to see what difference that made?

A. I think not at that time, the thing was lowered down and then we—

Q. When it was lowered down you went up on top. Then you lowered the weight after you went up on top. Now, what did you see?

(Testimony of George P. Dennison.)

Mr. STANLEY.—The witness testified that the engine was started up again.

Q. You lowered the weight first before you started the engine, did you? A. Yes, sir.

Q. Then you went up on top to see? A. Yes.

Q. Now, you have testified as to a difference of some five [732—650] inches, which cable was it that moved five inches?

A. Each of them moved five inches when there were no cars attached and the machine was stopped. With no cars attached, stopped the cable, lift the weight, having previously made a chalk-mark across the two strands and on the floor, then they each move about five inches, about four and a half to five inches.

Q. Moved about five inches in a direction from this sheave—

A. One moved one way five inches, the other moved the other way five inches.

Q. There was a belt here at the time and you saw it? A. A driving belt, yes.

Q. And you used that belt for the purpose of pulling it back?

A. I took hold of the pulley, just where the belt goes on the top of it and moved it in that way.

Q. Could it be moved back without a belt?

A. If the belt was taken off the pulley?

Q. Yes.

A. Quite as easily, we would not have the motor to move them.

Q. And you observed that this cable had shifted?

(Testimony of George P. Dennison.)

A. Yes, sir.

Q. One in one direction and the other in the other direction? A. Yes.

Q. These two?

A. Yes, sir. We had a chalk-mark on the two cables and on the floor, we marked it across like that, this cable.

Q. And when there were no cars attached and the motor stopped and weight lifted, this cable went ahead five inches and this one back five inches from the mark?

A. If there were loaded cars I tried it with loaded cars, this one came ahead seven inches and the other went back only three inches.

Q. When there were no cars on both cables on the Waikiki side of this model? A. Yes.

Q. One went ahead five inches?

A. Yes. [733—651]

Q. That is the Waikiki cable? A. Yes.

Q. And the Ewa cable on the Waikiki side went back five inches?

A. Yes. I did not measure it but that is as near as I can judge, five inches.

Q. It is the same thing?

A. Yes, as near as you can see.

Q. And when there were loaded cars the Waikiki cable on the Waikiki side went ahead seven inches?

A. Seven inches, yes.

Q. You are sure it is this cable?

A. This cable, the one on this side.

Q. That went ahead seven inches? A. Yes.

(Testimony of George P. Dennison.)

Q. And the other went back three inches?

A. Yes.

Q. Did you measure it? A. I did not, no.

Q. You did not measure it?

A. I did not have a rule, no.

Q. When you got up here, then, it was only a moving of seven inches and three inches at this particular point.

A. This represents the scale-house, it is right in where the scales are.

Q. There is where it moved right at that point?

A. Yes, sir.

Q. Now, when you lifted that cable up did you take it off the pulleys, the series of eight, on the Ewa side?

A. The cable was in that position (showing) was around on the eight pulleys.

Q. And you lifted it up?

A. Took hold of it about here, lifted it up and threw it or snapped it over.

Q. Snapped it over?

A. Until it was lying across there.

Q. Lying across where?

A. In that position (showing).

Q. There was a platform out there?

A. A platform out there.

Q. Lying on the platform?

A. I think it was the platform, I threw it across. Of course, this was slack there when it was thrown out one side. [734—652]

(Testimony of George P. Dennison.)

Q. Now, before you did that, Mr. Dennison, were those cars—had the cars been in motion?

A. How is that?

Q. Before you did that as you have just described, lifting the cable off the series of eight pulleys and putting it on the other side, on the Ewa side, had the cars been in motion?

A. The cable had been running with cars detached.

Q. Had been running with the cars detached?

A. Yes, sir.

Q. And stopped, had it?

A. Yes, stopped, and the order given for the weight to be lifted and it apparently had, because it slacked up.

Q. Then just prior to the time, as I understand you, that you attempted to lift the cable up and throw it over the other side by hand the cable had been in motion and no cars attached to it. And then when it was stopped, the engine was stopped, you went out there and attempted—and did put the cable over on the other side by hand?

A. Yes, sir, after the weight had been lifted.

Q. Did you try that same operation, Mr. Dennison, without lifting the weight? A. No, sir.

Q. Then you don't know, as a matter of fact, whether you would get that slack at that particular portion or not without lifting the weight? I am asking you, you don't know of your own knowledge, Mr. Dennison? A. What is that?

(Testimony of George P. Dennison.)

Q. You don't know, as a matter of fact, from your investigations there whether you could get the slack that is, of your own observation, whether you could get that slack if you did not lift the weight?

A. No, I did not try to lift it without. [735—653]

Redirect Examination of GEORGE P. DENNISON.

Mr. STANLEY.—You say, Mr. Dennison, that you did not measure this seven inches and three inches, was it measured in your presence?

A. Yes, sir.

Q. And did you state whether or not you observed those measurements?

A. I did not particularly observe them, I heard them called out.

Q. Did you see them being measured?

A. Yes, sir.

Q. Now, Mr. Dennison, you testified here that when you tried this operation of lifting the cable off the cars were detached? A. Yes, sir.

Q. At what time were they detached?

Objected to as not proper redirect examination.

Objection overruled. Exception.

Q. At what time were those cars detached, Mr. Dennison?

A. The cars were not detached just previous to that while the cable was running, they were detached before that.

Q. Detached before that?

A. Before that experiment was tried.

(Testimony of George P. Dennison.)

Q. Do you not remember this, Mr. Dennison, that during this experiment that the cable was running, the order was given to stop the engine, lift the weight and ungrip the cars?

Objected to as not proper redirect examination, leading and suggestive.

Objection sustained.

Mr. STANLEY.—You have stated, Mr. Dennison, that you did not release the—take the cable off the pulleys while the thing was in tension?

A. No, I did not try to.

Q. You did not try to? [736—654]

Mr. DOUTHITT.—We move to strike out the answer on the ground that it is immaterial and not proper redirect examination.

The COURT.—It is so ordered.

Mr. STANLEY.—I will ask you, Mr. Dennison, it was overlooked on direct examination, what was the condition of the cable as to being taut or slack when the cable was in operation with the cars running on the track? A. It was taut.

Mr. DOUTHITT.—Were the cars detached by means of the grip and the cable—the cable was taut, was it? A. Yes, sir.

Q. And when the grips were released from the cable, the cable was—there was a certain amount of slack in it, was there not?

A. There was very little, hardly perceptible, with the cars released, the slack would come with this raise, when the weight is lifted there is slack.

Q. Irrespective of the weight, don't you know

(Testimony of George P. Dennison.)

there is slack between each one—of these rollers, pulleys, dollies?

A. There is a certain little curve there, I don't know whether you would call it slack.

Q. There is sag? A. Yes, sag.

Q. There is sag between each one of these rollers when the engine was stopped whether you lifted the weight or whether you didn't?

A. There is sag, yes.

Q. A sag between each one of the rollers?

A. Yes, sir.

Q. All around the coal-conveyor?

A. I don't know all around, I only saw this end of it, but on this end between these horizontal rollers you can see it is not absolutely straight.

Q. It is just the condition of all wires where they are suspended?

A. Unless there is a very heavy tension so that you can in slack it is seldom that you can pull with it enough so that there is no sag.

Q. The condition of the cable that you saw there the other day, the wires were not sticking out all the way from a sixteenth [737—655] of an inch to one inch?

Objected to as not proper cross-examination.

Objection sustained.

Mr. DOUTHITT.—I ask the privilege, there is one question which I neglected to ask on cross-examination.

Q. On the cable on which these experiments were conducted last Saturday were not the wires sticking

(Testimony of George P. Dennison.)

out from one-sixteenth of an inch to an inch all the way up as far as you observed it?

Objected to.

Objection overruled. Exception.

Mr. DOUTHITT.—Your Honor allows me, in your Honor's discretion, to ask the question, the question having been omitted on cross-examination, although you had rested.

Mr. DOUTHITT.—Will you kindly answer the question?

A. There were no wires as far as I observed sticking out, the cable was in good condition.

**[Testimony of J. M. Young, for Defendant
(Recalled).]**

Cross-examination of J. M. YOUNG, recalled.

Mr. DOUTHITT.—This is called the hauling cable, Mr. Young, is it not, the hauling cable leading down from point B?

A. Yes, sir, that part of the cable we call the hauling cable.

Q. And is wound around the drum four times and it is traveling as you look at it from the Ewa side, the drum is traveling in a mauka direction, is it not?

A. Well, it is traveling in a right-handed direction, if you look at it from the side.

Q. Well, it is traveling in a direction opposite to the [738—656] makai end of the coal-conveyor, in other words, it is traveling towards mauka, is it not, the drum?

A. Well, this cable would wind up in a mauka direction.

(Testimony of J. M. Young.)

Q. Is not the drum traveling in that way?

A. The drum is not traveling at all, it simply revolves.

Q. I mean revolving? A. Yes.

Q. It is revolving in a mauka direction?

A. Depending on which side you consider it, one side would be revolving in a mauka direction and the other side right opposite.

Q. I mean the drum itself about which the cable is wound, the drum is revolving toward mauka, is it not, in a mauka direction?

A. Well, if you consider the one side of the drum it is going mauka, if you consider the other side it is going makai.

Q. The top of the drum?

A. Yes, I believe the top would be moving mauka.

Q. Now, there is a slack or a sag in all cables, is there not, where they are suspended between different points as they were on this coal-conveyor?

A. Well, I would not want to make such a general statement as that, in general there is a sag, but not in all cases.

Q. Where wire rope or cables are lying between two points there is a sag between those two points, is there not?

A. Well, under certain conditions there is a sag, certain other conditions there would not be a sag.

Q. Lying between two points?

A. Yes, sir, if there is no tension on the cable it will assume the shape of a freely suspended chord and that curve is known as the ——— and it is

(Testimony of J. M. Young.)

perhaps the most familiar curve we have in mechanics.

Q. There is a sagging of the rope between the pulleys or wire rope, or any other kind of rope, is there not? A. In general. [739—657]

Q. Are you familiar with the work of Mr. William Kent, the Mechanic-Engineer's Pocket Book?

A. Fairly familiar with it, I know Mr. Kent, I have a couple of copies of his book.

Q. And you are also familiar with the fact that Mr. Kent in his work gives the sag of rope between pulleys?

A. I don't recall that fact, no, it is likely he does.

Q. The C. W. Hunt Company, is this a work on engineering or is it a catalogue? No, it is not work. I will ask you to look at this book, Mr. Young, and ask you if that is the work that I have just referred to, that you have just referred to. That is the work that you referred to, is it not?

A. Yes, sir, that is the work, Kent's Pocket Book.

Q. Now, on the driving side that would be on the Waikiki side of this conveyor, at all speeds of the cable, Mr. Young, where the pulleys are forty feet apart, the rollers or dollies, are forty feet apart, there is a sag of four inches, is there not, between rollers?

Objected to on the ground that it is not based on any evidence in this case, the evidence being that the rollers are between twenty and twenty-one feet.

Objection sustained.

Q. Do you know the sag between the dollies on that coal-conveyor? A. Under what conditions?

(Testimony of J. M. Young.)

Q. On the driving side when the power is on?

A. Yes, sir, there is a small sag there.

Q. What is it?

A. Oh, it is a fraction of an inch, probably.

Q. What is that?

A. Probably a fraction of an inch.

Q. How far apart are those pulleys?

A. They are about twenty feet.

Q. Twenty feet and you say it is a fraction of an inch, Mr. Young? A. The sag, yes. [740—853]

Q. On the driving side, the driving side as used in this work of Mr. Kent means when the cable is being operated and any tension is being exerted on the cable, is it not?

A. I think that is what Mr. Kent means, although that is a point that there might be some discussion on. I believe, however, that is what Mr. Kent means.

Q. Now, calling your attention to this fact, the distance between pulleys in feet is what Mr. Kent says is forty feet. Now, we will take one-half of that. You say it is twenty feet here?

A. I said it was about twenty.

Q. We will accept those figures as being approximately twenty feet. It means between rollers as it rolls along on the track?

A. I know what you refer to here, you are talking about the dollies.

Q. Between rollers or dollies. However, I am not sure that that is what Mr. Kent is talking about. I want you to look at that book?

(Testimony of J. M. Young.)

A. I started to read that and you took it away from me.

Q. I thought you had finished. You see there the distance the sag of the rope between pulleys, all speeds. You see that table? A. Yes, I see it.

Q. There is only one reference to it that is on page 924? A. Yes, I see that.

Q. Isn't there a sag between the pulleys on the driving side according to Mr. Kent when the distance between the pulleys or rollers is twenty feet, is there not a sag in the cable amounting to approximately two inches?

A. Well, I would like to say in this connection that the table and the context these notes do not apply to wire rope, that is manila rope, and that is gotten up by Mr. Kent to show the general data affecting the transmission of power by the use of manila rope around the pulleys and that is used in power transmission that [741—659] is the transmission of power from the primary station to the point where it is to be used and does not apply in the case of a hauling system such as this where wire ropes are used and the pulleys there are grooved pulleys where there are a number of grooves around the pulley in which the rope travels and that table there is an entirely different proposition and has no application in this case.

Q. Do you mean to say, Mr. Young, that the sag in the rope as contained in Mr. Kent has application to manila rope and not to steel cables?

A. I certainly do, yes.

(Testimony of J. M. Young.)

Q. Where will you find that for me, please?

A. The total of the notes.

Mr. STANLEY.—Just read it.

A. Yes, I will read it. I can also give you the person from which Mr. Kent took his notes. There is a discussion there on transmission of power by manila ropes.

Mr. DOUTHITT.—Is there any difference between a manila rope and a cable?

Mr. STANLEY.—Before going on the witness said he wanted to read it, and I should submit he should be allowed to read it.

A. There is quite a little discussion here that occupies about four pages of small type in Kent's pocket book and it has general data that is put in here for the purpose of assisting engineers in the general problems of design and if you wish me to read it, I can do it. There are about as I say four pages of it. However, I will start off. Rope driving.

Mr. STANLEY.—What is that?

A. (Reading.) Rope Driving, the transmission of power by cotton or manila rope. "The transmission of power by cotton or manila ropes is a competitor with gearing and leather belting when the amount of power is large, or the distance between the power and the work is comparatively great. The following is [742—660] condensed from a paper by C. W. Hunt, Trans. A. S. M. E., xii, 230:

But few accurate data are available, on account of the long period required in each experiment, a

(Testimony of J. M. Young.)

rope lasting from three to six years. Installations which have been successful, as well as those in which the wear of the rope was destructive, indicate that 200 lbs. on a rope one inch in diameter is a safe and economical working strain. When the strain is materially increased the wear is rapid."

Then he gives a number of formulae here which affect those matters which I will omit.

"This makes the normal working strain equal to $1/36$ of the breaking strength, and about $1/25$ of the strength at the splice. The actual strains are ordinarily much greater, owing to the vibrations in running, as well as from imperfectly adjusted tension mechanism.

"For this investigation we assume that the strain on the driving side of a rope is equal to 200 lbs. on a rope one inch in diameter, and an equivalent strain for other sizes, and that the rope is in motion at various velocities of from 10 to 140 ft. per second.

"The centrifugal force of the rope in running over the pulley will reduce the amount of force available for the transmission of powers. The centrifugal force $F=Pv^2 \div g$.

"At a speed of about 80 ft. per second, the centrifugal force increases faster than the power from increased velocity of the rope. Computing this force at various speeds and then subtracting it from the assumed maximum tension, we have the force available for the transmission of power. The whole of this force cannot be used, because a certain amount of tension on the slack side of the rope is needed

(Testimony of J. M. Young.)

to give adhesion to the pulley. What tension should be given to the rope for this purpose is uncertain, as there are no experiments which give accurate data. It [743—661] is known from considerable experience that when the rope runs in a groove whose sides are inclined toward each other at an angle of 45° there is sufficient adhesion when the ratio of the tensions $T :- t = 2$.

“For the present purpose, T can be divided into three parts: 1. Tension doing useful work; 2. Tension from centrifugal force; 3. Tension to balance the strain for adhesion.

“The tension t can be divided into two parts: 1. Tension for adhesion; 2. Tension from centrifugal force.

“It is evident, however,—”

Mr. DOUTHITT.—This is all very nice, Mr. Young, but I don't see what we are standing here listening to all this for. I am simply asking you a question as to sag on a steel cable the rollers of which are twenty feet apart?

Mr. STANLEY.—And Mr. Young's statement was that the table from which Dr. Douthitt purported to read had nothing whatever to do with steel cables.

Mr. DOUTHITT.—I am simply asking you if that does not apply, you say it does not apply to steel cables?

A. Yes.

Q. Well, I am asking you, Mr. Young?

A. Yes.

Q. You say that it does not apply?

(Testimony of J. M. Young.)

A. I certainly do, it is down here in black and white.

Q. Now, what is the sag in the steel cable where there is a distance of twenty feet between pulleys or rollers?

Objected to as asked and answered as being a fraction of an inch.

Mr. DOUTHITT.—What fraction of an inch, that is very indefinite.

A. No, I don't think so.

Q. What do you mean, is it one eighth of an inch, or a quarter of an inch?

A. I mean exactly what I said, a fraction of an inch.

Q. One eighth of an inch is a fraction of an inch?

A. It [744—662] is one of them.

Q. A quarter of an inch is a fraction of an inch?

A. Another one.

Q. Five eighths of an inch is a fraction of an inch.

A. Well, in saying a fraction of an inch I wish to convey to your mind that the sag would not be over an inch.

Q. Then it may be three quarters of an inch between pulleys? A. It might be, yes.

Q. That is between each pulley around the entire coal-conveyor of twenty-eight hundred feet?

A. You are talking about sag now, are you not?

Q. Sag, that is correct.

A. A fraction of an inch.

Q. And it might be three quarters of an inch?

A. Well, you understand that in a system of this

(Testimony of J. M. Young.)

kind there is considerable flexibility in the arrangements made for taking up that that the slack in the cable, the sag varies very considerable even when it is in motion, when it is in operation, it must be in order to avoid the destructive effects.

Q. That is true.

A. Therefore, this sag must vary with the stress, with the stresses, and it is perfectly reasonable to suppose that under certain conditions of operation sag would be very little and under certain other conditions which do not vary very much from the first assumed it will vary very much more. It will be also influenced somewhat at the point at which you make the observation. For instance, if you grip a car suddenly just behind the car there will be, of course, more sag than just in front of it and so on. There are many conditions there. It is a question I rather hesitate to pin myself down on under oath. I think you are asking me too much; I don't think anybody could.

Q. I don't know. I know I could not do it?

A. I don't [745—663] care to make any definite statement, five eighths of an inch or nineteen thirty seconds, or anything like that. I said it was a fraction of an inch, that would convey to your mind something greater if I said something greater, but I wish to get into your head that it was something less than an inch.

Q. Something less than an inch? A. Yes, sir.

Q. Probably? A. Yes, sir.

Q. And that something less than an inch was dis-

(Testimony of J. M. Young.)

tributed over that entire twenty-eight hundred feet of coal-conveyor?

A. I did not say that at all, we confined our statement to the distance between two pulleys. I didn't say anything about twenty-eight hundred feet.

Q. I know you didn't, but you understand that the pulleys are at a distance of twenty feet from one another all the way around this coal-conveyor, are they not? A. Yes, sir.

Q. And wherever those twenty feet appear, the distance between pulleys of twenty feet appear, you would expect us to understand your testimony that you would find a sag of three quarters or less than an inch or a fraction of an inch?

Objected to.

Mr. DOUTHITT.—I will reframe the question.

Q. In the event that you had no cars at all on it moving, the cable is at rest, you will find a sag between each one of these pulleys wherever the dollies are situated in the tracks around the coal-conveyor, will you not?

A. Well, I will say that the cable could not be at rest and moving at the same time.

Q. That is true but when the cable is at rest you will find a sag between these rollers or dollies wherever the dollies are constructed around the coal-conveyor? A. Yes, sir.

Q. Is not that a fact?

A. There is a small sag there. [746—664]

Q. And that sag you will see between each one of them, would be a fraction of an inch or less than an

(Testimony of J. M. Young.)

inch? A. Yes, sir.

Q. Between each one, between each two?

A. Between every two dollies.

Q. Now, you say there was a fifteen hundred pound tension on the cable? A. I did not.

Q. What did you say about that?

A. You asked me how much tension would probably be in that cable, I said in my opinion the tension would be between a thousand and fifteen hundred pounds.

Q. Would that be under all conditions?

A. No, it is varying constantly.

Q. It varies according to what?

A. It varies according to the diameter for one thing, it varies according to the number of loaded cars that are being pulled, the number of empty cars, the number of cars that are being gripped and un-gripped, of course that affects it. It varies with the condition of the cable somewhat, it varies with the voltage of the electric system which is driving it or pressure of steam which is driving the engine, it varies with the actual amount of weight in the box, it varies with the lubrication of the sheaves, the vertical pulleys around which the cable moves and the lay on the drum, there are other factors, those are some of them.

Q. The resistance of the air?

A. No, I would consider that negligible.

Q. You would consider that negligible?

A. Yes.

Q. You spoke of the temperature?

(Testimony of J. M. Young.)

A. Temperature, yes, that affects it because it is a well known fact that steel or any porous metal will respond on being heated and if we change the temperature say ten degrees there is a corresponding amount of change in length of the cable and in ordinary design work, we consider that under the range of temperature ordinarily employed in designing there is about one inch for every one hundred and [747—665] thirty feet of length. That of course makes clear the provision which Mr. Kent has made for a large amount of take-up, he has the pulleys that move up and down on the cable situated that the cable can move itself up or down and neutralize and take up this slack, much of which is due to temperature.

Q. Now, it is a natural mechanical fact, is it not, Mr. Young, that when you have a sag on any portion of a given rope, whether it be wire rope or whether it be manila rope, the slack if you will have any will naturally go to that sag?

Objected to as unintelligible.

Mr. DOUTHITT.—For example, if you have a sag at this portion, I mean by a sag a rope in this condition that I am describing, if there is any sag in the cable at all it will naturally run to the cable at that point; it is a mechanical fact, is it not?

A. You did not state that right, Mr. Douthitt. I will say this, that a sag in the cable is accompanied by a certain slackness.

Q. That is true?

A. I won't say that any other slack or sag might

(Testimony of J. M. Young.)

move there and take its position there. You see the two are very closely associated, in fact it is the slack which produces the sag, not the sag which produces the slack.

Q. If you have a sag in your cable and it is in the position I have described, now, if there is any slack elsewhere around that cable it will naturally run to that point, will it not?

A. I don't see why it should, because the sag at that point would already have its slack.

Q. But there would be more slack, there would be a tendency—you take a piece of string and draw it across the table and stop it like that the rest of the string would naturally go to the center, wouldn't it?

A. I don't see why it should.

Q. Is not that a fact?

A. It most certainly is not a [748—666] fact.

Q. If you have to send a cable along like that wouldn't the slack in the rest of the cable if it were traveling along naturally gravitate to that spot?

A. The natural thing to happen in a case of that kind would be for the cable to stop, I should say.

Q. But supposing it were going and you stopped the cable if the cable were moving at the time it came off and was in that position as I have just described and you stopped your engine, where would your slack go to around that coal-conveyor, wouldn't it go to that point?

A. No, I don't think it would, I think it would disappear due to the force of gravity which produced the slack, the force of gravity principally, and that

(Testimony of J. M. Young.)

will act more directly and more effectively on those operations of the cable and the effect of gravity would be to produce a small slack in each spot around between the pulleys and I believe that most of the slack would disappear in that way. I don't think that any of the slack would automatically and inherently pick itself up and lay itself around that bend; I cannot conceive of that, that would be rather surprising if that should happen.

Q. Wouldn't the slack be forced around to that—if you were running the cable, the cable were in operation, it came along at that point and your cars were attached, we will say the cars were attached and the cable certainly stopped, is it not a mechanical fact that the slack would run to that point?

A. Well, you impose another condition. You have now brought up the matter of the cars being attached to the cable. The fact that a car was attached to the cable would probably produce a certain amount of the slackness, just in front, but that would be immediately assimilated and taken up and absorbed by that moving weight which goes up and down.

Q. On this side of the coal-conveyor?

A. On either side.

Q. Do you mean to say that that weight moving up and down [749—667] could take up the entire weight of this cable and all the cars attached, all the cars weighing three tons at least?

A. I did not say that all.

Q. Could it take it up and down?

A. It does as a matter of fact, yes.

(Testimony of J. M. Young.)

Q. Takes in the slack there under those conditions when you stop it? When you stop your engine suddenly and if you have the cable off in that way wouldn't it naturally throw the mechanism of those cars which were thrown out as we were stopping would it throw the slack right around to that point?

Objected to as indefinite.

A. I don't mind answering the question.

Objection withdrawn.

A. I have answered it already several times, but I don't object to doing it again. The slack is taken up by this moving weight, this weight which is capable of moving up and down. The magnitude of the weight is so proportioned, so adjusted that it is capable of taking up this slack. Now, if the slack occurs we know that the slack is taken up. It is properly a question of observing the motion of the machine. We know the fact that it does. If you have seen the machine you know it to be a fact.

Q. Know what to be a fact?

A. That the slack is taken up.

Q. Takes up the slack at this particular portion of the coal-conveyor?

A. Why, Mr. Douthitt, that weight takes up the slack on the entire distance, it would be a foolish thing to take up the slack at that particular point, it takes all the slack up.

Q. It takes the slack as it takes it from the drum?

A. It pulls it in.

Q. Of course, it does just the same as you would have to do to pull it in by hand, if you didn't have it

(Testimony of J. M. Young.)

there, but I [750—668] mean this, Mr. Young, I mean this, if you had loaded cars, twenty cars for example, five or six on the way towards the coal-yard, on the Waikiki side, some six cars between the makai tower and mauka tower on the Ewa track which were not attached to the cable and four cars loaded at these towers and the cable had come off the pulleys at the makai end and the engine was certainly stopped there would the slack of the cable caused by the momentum of the cars which would naturally have a tendency of running around the mauka end to that makai end, wouldn't it?

A. It would if the weight had dropped down and touched the ground and was being supported so that the weight was no more effective. I don't think that the change of the weight would be sufficient for that to happen. This adjustable weight is a weight placed on the cable for the purpose of adjusting the tension and is capable of taking up several feet of slack and the slack which would be produced at that end, the mauka end, under the conditions which you have just named.

Q. Makai end?

A. Yes, would be less than the slack which the weight is capable of absorbing.

Q. Yes, but it would produce slack there under the conditions, wouldn't it, the momentum of the cars does that. The momentum of those cars being stopped suddenly, loaded cars on their way towards the coal-yard under the circumstances and conditions would produce—would take the slack to that end of

(Testimony of J. M. Young.)

it? A. If you will permit me to—

Objected to as having been asked and answered several times.

Objection overruled.

The COURT.—I don't think it has been answered with reference to loaded cars which counsel asks about.

Mr. DOUTHITT.—Please answer the question.

A. Please state it again.

(Last question read.) [751—669]

Q. The engine being stopped, the cable being stopped, the engine stopping of course the cable was stopped, suddenly under steam power?

A. If that were possible.

Q. How is that?

A. I say if that were possible.

Q. What is that?

A. Stopping suddenly.

Q. Stopping it as suddenly as it may be stopped by the use of steam?

A. Well, under those conditions, under the conditions which you have just named stopping the engine is accomplished by shutting off the steam, it has a certain amount of inertia. In other words the drum of the engine continues to revolve under its own inertia when it has any momentum. The cars continue to move also under their own momentum and of the moving parts and if you shut the steam off all the parts will move, moving in unison in about the same general relation that they were moving before you shut the power off and I do not believe that

(Testimony of J. M. Young.)

the preponderance of motion of the cars over the other parts would produce slack there to any extent that the weight would not absorb. Is that clear to you?

Q. Yes. Why the weight, Mr. Young, only absorbs the slack as it comes going in a mauka direction, does it not?

Objected to as already asked and answered.

Objection sustained.

Mr. DOUTHITT.—Mr. Young says it absorbs from all around there.

The WITNESS.—I would like to bring out another point if I may, Judge.

The COURT.—Proceed.

A. A number of insinuations have been made here frequently trying to bring in matters that are rather humiliating and I would like to correct that if I may.

Mr. DOUTHITT.—Let the jury hear what you say.

A. And I would like to say that a number of suggestions have [752—670] been made by Mr. Douthitt and I would like to correct those if I may. On my last appearance here, which I believe was Friday, if I am not mistaken, I think it was Friday, Mr. Douthitt got up a question of an excerpt from a catalogue which purported to be a Hunt catalogue and he read from the catalogue, I believe, and referred to it and I should like to see that.

Q. About the what?

A. About the life of a cable. A statement was made that a cable had a life of five months and for

(Testimony of J. M. Young.)

one hundred and fifty thousand tons.

Q. You would like to see that? A. Yes, sir.

Q. We can show it to you right here. Each cable handles about one hundred and fifty thousand tons of material and lasts about five months?

A. If I may. This is a page from the Hunt catalogue which is made up of a number of little bulletins. This particular one applies to Hunt's cable railways and on one page is Hunt's steam engine cable, a good record continuous run of five months without closing the tackles.

“ ‘Hunt’ Steam Engine Cable Driver at the Roane Iron Company’s Blast Furnaces, Rockwood, Tennessee.

“A cable railway is used to bring stock from the yard to the skips of the furnaces. Mr. Stuckey, the constructor of the furnaces, recently made the following statement as to the merits of this engine:

“‘It is decidedly the best engine for heavy constant work I have ever seen in my 35 years of experience as a blast furnace constructor. This engine has been in constant operation from August 1, 1901, to the present time, night, day and Sunday, the only exception being shut downs of about two hours to apply new cables to the railway. During all this time no repairs of any kind whatsoever have been made to the engine and no adjustment of any kind has been made, other than to take up one-half turn on the metallic packing.’—November 10, 1903.” [753—671]

Then down below it says:

(Testimony of J. M. Young.)

"Each cable handles about 150,000 tons of material and lasts about five months."

Now, the point I would like to call to your attention is this, that in my testimony I made the statement that the conditions under which this cable was operated that it ought to have an economical life of approximately eighteen months, perhaps I said from fifteen to eighteen months, and Mr. Douthitt read this to show that this cable would only last five months, five months and would carry one hundred and fifty thousand tons, whereas I have stated one hundred and twenty-five. I think that is misleading because Mr. Douthitt did not bring out the other fact in connection with it, namely, that this cable operated night and day continuously for five months. Now, five months' continuous operation means about thirty-six hundred hours. Now, thirty-six hundred hours under the conditions under which the cable operates on this plant, the Inter-Island plant, will mean about thirty months of operation of the cable. In other words it means a period of operation considerably greater than I stated the economical life of the cable would be and I object to being reported in that way. I don't think it is a credit, it is not ethical.

Q. We are very glad to hear that explanation, Mr. Young, but I am not attempting to do anything but what is exactly within the legitimate lines of cross-examination.

A. That is not legitimate, it is not true.

(Testimony of J. M. Young.)

Q. You asked for the statement and I gave it to you.

Mr. STANLEY.—Mr. Douthitt asked this witness if he was familiar with Hunt's works. There is no such work as Hunt's work, it is a collection of catalogues.

The COURT.—An opportunity ought to be given to the witness to examine the publication from which counsel examines him. [754—672]

A. The point on which I wished to assure myself was this, whether or not the catalogue that Mr. Douthitt was using was the same as the catalogue which I have in my office was and I referred to that catalogue on return to my office to see the statement which I thought was the one referred to and I just wanted to be sure that it was, and it is the same catalogue, the same statement, and it is for continuous operation, which would mean about thirty months here, considerably in excess of what I should consider the economical life of the cable. In other words that eliminates that entirely of value.

Mr. DOUTHITT.—How much would a steel cable, a three-quarter inch, nineteen wire, six strand cable stretched in the course of a year of use such as it was subjected to in this case?

A. Well, that would depend on a number of factors. It would depend first of all upon the kind of material of which the cable was made. It would depend on whether or not it was a standard cable, or whether it was a Lang laid cable, it would depend on the size of the drums and pulleys, whether it has been

(Testimony of J. M. Young.)

in continuous operation, whether or not it has been well lubricated, whether or not it has been allowed to rust, that being one of the factors which will influence it very materially, and a number of other factors. I will say though that the stretch in that cable in my opinion would be, oh, several feet, a number of feet.

Q. Could you give us anything about the stretch of the cable per foot?

A. Well, it would be somewhat less than the elastic limit of the material, it would be a fraction of an inch.

Q. Do you think it would be as much as a quarter of an inch per foot?

A. I doubt very much if it would.

Q. Well, how about one-sixteenth per foot or one-eighth of an inch per foot?

A. It might be as much as one-eighth.

Q. One-eighth of an inch per foot?

A. It might be, I hardly think so, but it might be.

Q. Now, you stated, Mr. Young, a few moments ago that you [755—673] thought it would be several feet. Now give us approximately what you mean by that?

A. Well, allow me to make a little explanation. When a new cable is placed on a cable-way it is spliced together, the two ends are spliced and the weight at that time is near its upper limit of movement, that is in the upper portion of its limit of movement and as the cable wears and stretches why the weight gradually drops lower and lower. Now,

(Testimony of J. M. Young.)

the range of movement is provided for this weight is perhaps five or six feet, perhaps more than that, and the cable if left on long enough will eventually stretch out so as to take up all that length of movement just by weight. It is not a thing that can be expressed in any exact measurement because it is a thing which occurs every day more and more progressing.

Q. The only way that you could tell that, Mr. Young, is by actual experience with the cable where you are working you could tell the stretch of the cable, there is a set table by which you could judge that, is there not?

A. There may be, I don't know, I have never seen one. I don't recall and I don't know. It is likely though that a table has been made, I don't recall any.

Q. Would you think that in a cable twenty-eight hundred feet long used for eight months and subjected to the same amount of work that this cable was subjected to might stretch we will say about fifteen feet?

A. Well, I should hardly expect it to stretch that much although it might. I hardly think it would be that much. [756—674]

Redirect Examination of J. M. YOUNG.

Mr. STANLEY.—Do you know anything about how much it would stretch in eight months?

A. Beg pardon?

Q. Can you approximate how much it would stretch in eight months subjected to the use to which it was put in this case by the Inter-Island Navigation Company on the coal-conveyor?

(Testimony of J. M. Young.)

A. I would not want to make a definite statement upon that point because I have not any exact data upon which to go. I don't know of any. I have never seen any. I believe that I have covered it when I say that it would stretch several feet. I don't believe it would go as high as fifteen feet, I think it would be considerably less than that.

Mr. DOUTHITT.—Although it might?

A. Yes, the cable might have got heated up some-time and stretched.

Mr. STANLEY.—It might have been heated and stretched, there is a good many conditions?

A. It may have been caught in some way or other by a Stillson wrench or monkey wrench and at that time a strain put on with the engine and in such case it would naturally stretch, some steel cables do stretch, there is no doubt about that but they do not stretch as much as a rope, a manila rope, but they stretch a certain amount.

A JUROR.—Mr. Young, would that several feet of stretch which you have just testified to or made a statement about wouldn't that stretch be taken up and adjusted by the weight?

A. Immediately, immediately. That is why the stretch has no bearing on this case because it is immediately absorbed by the weight and taken up.

Mr. DOUTHITT.—While in motion, Mr. Young, of course the [757—675] weight would take it up.

Mr. STANLEY.—It will take it up whether in motion or not as soon as the weight is suspended on it.

(Testimony of J. M. Young.)

A JUROR.—How could it do that, can you explain it, when it is not moving it takes up the slack and when it is moving it does the same thing?

A. I think I can.

Q. I would like to know?

A. This weight here is in a bight of the cable, in fact the weight is being supported by the cable and the weight in the process of being supported induces a certain strain or stress in the cable and that stress is transmitted along the cable in the direction of its length by virtue of the wires being continuous and it is a well known mechanical fact that when a chord, a flexible chord, or even a rigid member is stretched in one part and is not restrained by a clamp that the stress will travel along in the direction of its length, therefore it is obvious that if a cable is stretched along here the stress will be present in all portions of the cable.

Q. That is when it is moving?

A. When it is moving or when it is quiet. Another point that might be brought out there that this drum on which the cable is wound winds on one side of the drum and is forced over to the other side in the process of winding and unwinding it is a spindle, in other words, the cable is wound on one end and is unwound on the other and it is obvious that there will be a space produced on one side and piling up in the other at the end of the spindle and in order therefore for the cable to remain on the drum it must slip over, it constantly slips over on the drum in every revolution of the drum that cable slips over

(Testimony of J. M. Young.)

three-quarters of an inch. Well, now a stress is being transmitted to the cable from the drum and at the same time there is a movement by translation in the direction of the axis of the drum, there is a friction motion, it is the result of two movements, the cable not only slips over but it [758—676] slips ahead a little bit on account of the stress and that very slipping will more than account for these small variations of slack which you have just been referring to. Is that clear to you?

Mr. DOUTHITT.—Slipping ahead?

A. It will slip on the drum.

A JUROR.—Slipping ahead or backwards?

A. It may be one way or the other depending upon the number of factors.

Mr. STANLEY.—One of the jurors asked a question, that is the height of the top of the roller above the ties.

Mr. DOUTHITT.—Two and a half inches.

Mr. STANLEY.—That is admitted.

Mr. DOUTHITT.—Yes.

Mr. STANLEY.—It is admitted that the top of the roller or dolly is two and a half inches above the planking between the tracks.

A JUROR.—Mr. Young, there is one thing I would like to ask that I don't seem to understand. When this cable on this side for instance, supposing that this was caught and jammed, the engine was stopped and this obstruction was taken away and the engine was stopped, do you mean that this box would pull the slack around?

(Testimony of J. M. Young.)

A. Do you mean if rigidly held there as by a vise?

Q. By a vise? A. A grip like a vise?

Q. The engine was stopped and then the vise taken off, would this box take up all of the slack?

A. Do you mean if you released the grip, the vise there?

Q. Yes.

A. If you released that it immediately would take it up.

Q. After the engine had been stopped? A. Yes.

Q. Left lying on there it will pull it around?

A. Yes.

Q. Mr. Young, will it pull it back this way or will it slip [759—677] on the drum?

A. It would pull in both directions and therefore some slipping on the drum and the sum total of all motions will be equal to the slack taken up. It will slip in both directions and equalize. That is one of the features of a drum of that kind, that is the point on which the excellence of this system depends. You understand that this Hunt system is a most admirable system. It is a remarkable combination of working movement. As a matter of fact Mr. Hunt is one of the men to receive the Corson medal, which is one of the highest acknowledgments that a man can receive from a scientific society in America and that medal was awarded on account of this design. It is a most remarkable combination of mechanical movements and that is the chief feature of it that these stresses and movements are so distributed as to avoid excessive wear and any

(Testimony of J. M. Young.)

trouble to the apparatus. There is no question at all about the weight taking the slack up. Some of the slack will be received around the drum in the way of the movement of the cable on the drum. Other portions of it will come from either end that can be ascertained definitely by seeing it in operation. It is a positive fact and one that can be verified by anybody who looks at it in operation.

Mr. STANLEY.—As I understand, Mr. Young, you verified it by going down to the drum on several occasions and marking the strands, the turns of the cable around the drum horizontally and also marking the side of the drum itself?

Objected to as improper redirect examination.

Objection sustained.

Q. How, Mr. Young, would you proceed to demonstrate that?

Objected to as incompetent, irrelevant and immaterial, and having been gone into on direct examination. A. In order—

The COURT.—You do not refer to this particular conveyor, [760—678] but any conveyor of the Hunt design?

Mr. STANLEY.—I am asking the general demonstration.

Objected to as not redirect examination.

Objection sustained. [761—679]

[Testimony of Charles Merseberg, for Plaintiff (in Rebuttal).]

Direct examination of CHARLES MERSEBERG, recalled for the plaintiff in rebuttal.

Mr. DOUTHITT.—Mr. Merseberg, you were a witness for the plaintiff in this case in chief?

A. Yes.

Q. While you were employed on the coal-conveyor of the Inter-Island Steam Navigation Company, the defendant in this case, prior to Mr. Ward's injury I will ask you whether or not Mr. Gedge, the Secretary and Treasurer of that company, ever gave you or the men on the coal-conveyor any orders in regard to the work, with regard to the conduct of the work on the coal-conveyor?

Objected to as improper rebuttal.

Objection sustained. Exception.

Mr. DOUTHITT.—Mr. Merseberg, at the time of George Ward's accident, the plaintiff in this case, I will ask you whether you heard Nunu tell anything to Ward? A. No.

Q. I will ask you whether there was anything to prevent—or specifically I will ask you this question: it has been testified here by Nunu in this case for the defense that Nunu told George Ward at the time that the cable was being replaced on the day of his accident to lift the weight; I will ask you whether or not Nunu ever made that statement to Ward?

A. I never heard him make such a statement. He did not say so.

Q. And you were present—I mean at the time of

(Testimony of Charles Merseberg.)

the attempt to put the cable back or at any time that day?

A. I never heard him make such a statement.

Q. And were you present there at the time when the attempt was made to replace the cable?

A. Yes, I was close up to them. George, Nunu and myself very near each other. [763—681]

Q. And were you in a position to hear any conversation that took place between Nunu and Ward on that occasion?

A. I was quite close up to him and I would have heard every word.

Cross-examination of CHARLES MERSEBERG.

Mr. STANLEY.—Did you hear any talk down there? A. About what?

Q. Did you hear any talk about anything at the time that Ward or you people down there were attempting to put the cable back? A. No.

Q. You did not hear a word said by anybody down there at the time you put the cable back? A. No.

Q. You did not hear a word said by anybody down there at the time that cable was put back or they were attempting to put the cable back?

A. We were not talking, we were working, we wanted to get the cable back.

Q. Yes, but from the time that Ward got down there until his accident you heard no talk at all?

A. Well, before we attempted to replace the cable he told us to go and get the crowbars.

Q. Yes, after he told you to go and get the crowbars you did not hear a single word spoken?

(Testimony of Alice Ward.)

A. No, we did not do any talking, we went to work. [764—682]

[Testimony of Alice Ward, for Plaintiff (in Rebuttal).]

Direct Examination of MISS ALICE WARD,
called for the plaintiff in rebuttal, sworn.

Mr. DOUTHITT.—What is your name, Miss Ward?

A. Miss Alice Ward.

Q. And where do you live?

A. I live 803 Kinau Street.

Q. And how long have you lived there?

A. Two years.

Q. Is Mr. George Ward any relation to you?

A. Yes, he is my uncle.

Q. And were you living there after your uncle, Mr. Ward, was hurt at the Inter-Island Steam Navigation Company? A. Yes, I lived there.

Q. Do you know Mr. Norman E. Gedge?

A. Yes, sir.

Q. And did you know him at the time?

A. Yes, sir.

Q. That Mr. Ward was hurt? A. Yes, sir.

Q. Do you remember—did you ever see Mr. Gedge at Mr. Ward's residence at 803 Kinau Street?

A. Yes, sir.

Q. About how long after Mr. Ward was out of the hospital was that?

A. The second Sunday after Mr. Ward, my uncle George, was home from the hospital, Mr. Gedge called on him.

(Testimony of Alice Ward.)

Q. And did you hear any conversation between Mr. Gedge and Mr. Ward? A. Yes, sir.

Q. Would you please tell the jury what that conversation was?

Mr. STANLEY.—We object to it on the ground that it is not rebuttal and on the further ground that no ground was laid on the examination of Mr. Gedge for the impeachment.

Mr. DOUTHITT.—I asked Mr. Gedge on the stand if he didn't have a conversation with Mr. Ward at George Ward's house on Kinau Street after he got out of the hospital and whether he didn't [765—683] complain to Ward that Mr. Kennedy had relieved him of his work down there as general superintendent of the coal conveyor. He said nothing of the kind ever took place.

Mr. STANLEY.—We do not deny that.

The COURT.—His attention was not called to the presence of any third person.

Objection sustained. Exception.

No cross-examination.

The further hearing of this case was continued until to-morrow morning at 8:30 o'clock. [766—684]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January Term, 1914.

GEORGE E. WARD,

Plaintiff,

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY,

Defendant.

June 17th, 1914.

Mr. DOUTHITT.—Will counsel admit that the cable, machinery, motor and appliances now in use on the coal-conveyor were the same at the time of the experiments which were made by Mr. Young and Mr. Dennison?

Mr. STANLEY.—No, sir. We will admit that the last experiment—that the motor and appliances at the time of the experiments made by Mr. Dennison were the same as they are to-day. We will admit that the last experiments made by Mr. Young, that at the time of the last experiments made by Mr. Young, that the motor and appliances are the same as they are to-day. Mr. Young was down there a year ago when the appliances were different.

The COURT.—Mr. Young made two experiments.

Mr. DOUTHITT.—I mean the last experiments that were made by Mr. Young and Mr. Dennison, as testified to here in this case.

Mr. STANLEY.—We will admit that the motor and appliances were the same as they are to-day

(Testimony of Alice Ward.)

during the experiments conducted within the last few weeks, conducted by Mr. Young, it being distinctly understood that the experiments were made by Mr. Young when the appliances were different, when there was steam power and when there was a cable practically the same as the cable in operation [767—685] at the time that Mr. Ward was hurt.

Mr. COKE.—You admit that when the experiments were made by Mr. Young or Mr. Dennison within the last two weeks, that on those occasions the cable and appliances and machinery were the same as they are now?

Mr. STANLEY.—I am not sure that I can. We admit that the recent experiments, at the time of the recent experiments made by Mr. Young and Mr. Dennison we admit that the appliances were driven by electricity, at that time and generally the conveyor was in the same condition. My impression is that very, very recently a new cable has been put in.

Mr. STANLEY.—Mr. Sheedy informs me over the telephone that the present cable was put in on the 13th of May of this year, and I understand that the counsel is referring to the cable and the motive power.

Mr. DOUTHITT.—Not only the motive power but the belts, the machinery and all of the appliances and paraphernalia relating to the motive power and motor.

Mr. STANLEY.—Including the motor, the drum, including the belt that is now in use, the absence of

(Testimony of George E. Ward.)

cranks, crank shafts.

Mr. DOUTHITT.—The cable was put in there on the 13th of May?

Mr. STANLEY.—Yes. After consultation over the telephone with Mr. Sheedy I am prepared to admit that the motor and the conveyor is in practically the same condition, and all the apparatus in the same condition to-day as when the recent experiments were made by Mr. Young, and the experiments were made by Mr. Dennison. [768—686]

**[Testimony of George E. Ward, for Plaintiff
(Recalled in Rebuttal).]**

Direct examination of GEORGE E. WARD, Plaintiff, recalled in rebuttal.

Mr. DOUTHITT.—Mr. Ward, did you visit the coal-conveyor the afternoon of June 16th?

A. Yes, sir.

Q. From your experience and knowledge regarding cables and the kind of cables used on the coal-conveyors and the work I will ask you what kind of a cable was in use on the coal-conveyor yesterday?

A. A Lang laid cable.

Q. What difference, if any is there between a Lang laid cable and the cable which was in use on the 8th day of July, 1912?

A. There is a big difference.

Q. Well, now, would you please tell the jury what that difference is, explain it?

A. A Lang laid cable is different entirely from the cable that was in use on the 8th day of July, 1912. The Lang laid rope is made of strands twisted to the

(Testimony of George E. Ward.)

left hand and the strand itself is going left handed.

Q. Yes?

A. And that cable is not pliable, it is a stiff cable, it is not a pliable cable. Whereas the cable that was in use on the 8th day of July, 1912, was a flexible nineteen-wire, three-quarter-inch diameter, right-hand rope.

Q. Six strands?

A. Yes, six strands and I think a manila core or a hemp core.

Q. A manila core? A. A hemp core, I think.

Q. A hemp core? A. Yes, sir.

Q. Now, what is the difference between the two with regard to the operation on a drum, we will say?

Mr. STANLEY.—Just one moment. We object on the ground that it has not been shown that the witness has had any experience [769—687] with this Lang cable, or seen it in operation on a drum or anywhere.

Mr. DOUTHITT.—Mr. Ward, have you ever had any experience while at sea or as a machinist with a Lang laid rope?

A. I have had,—I have seen Lang laid ropes, I have seen it back east, used back east and I have seen it on board ships.

Q. Are you familiar with the Lang laid ropes?

A. I am.

Q. And are you familiar with such ropes as were in use—as are in use at the coal-conveyor at the present time? A. What is that question?

Q. Are you familiar with such Lang laid ropes as

(Testimony of George E. Ward.)

are in use on the coal-conveyor at the present time?

A. Yes, sir.

Q. Can you tell the difference between a Lang laid rope and a Roebling cable, that is a nineteen wire, six-strand, steel flexible cable, in their operation on the drum? A. Yes, sir.

Q. Well, now, will you please explain to the jury what the difference is between a Lang laid rope and a Roebling cable such as the one in use on the 8th day of July, 1912?

Mr. STANLEY.—I object to it on the ground that the witness has not been shown to be qualified.

Objection sustained.

Mr. DOUTHITT.—Have you ever observed a Lang laid cable in use over a drum similar to the one in use on the coal-conveyor?

A. Yes, sir, that is what I had reference to back east. Also that I had seen the Lang laid rope used on a drum.

Q. And elsewhere besides back east?

A. On ships, used for towing purposes.

Q. And when it is used for towing purposes was it wound around a drum?

A. They had a drum there for the purpose of taking it in when the ship would let go, then it was hauled in on a drum.

Q. Do you know the action of a Lang laid cable around a drum [770—688] such as was in use on the coal-conveyor of the Inter-Island Company—as is in use?

Objected to as indefinite.

(Testimony of George E. Ward.)

The COURT.—What do you mean by action; it ought to be limited?

Mr. DOUTHITT.—While the drum is in motion tell the jury the difference between the Lang laid rope in its work around a drum such as in use on the coal-conveyor and a Roebling cable?

Objected to on the ground that the witness has not been qualified.

Objection overruled.

Mr. STANLEY.—I would like to be allowed to examine the witness as to his qualifications?

The COURT.—You may do so, you may examine him further.

Examination of witness as to qualifications.

Mr. STANLEY.—Mr. Ward, when you first saw a Lang laid cable in operation when was it?

A. On board ship.

Q. What ship? A. In San Francisco.

Q. When?

A. When I was traveling back east, the towboats used it.

Q. When was that? A. 1911.

Q. And you left here in May of 1911, towards the end of May, and returned at the end of August, 1911?

A. Yes, sir.

Q. Now, on what ships going to San Francisco did you see a Lang laid cable in operation?

A. On towboats.

Q. What towboats?

A. In the Bay of San Francisco, I don't remember the names.

(Testimony of George E. Ward.)

Q. How was it that you came to observe it, where were you?

A. I was going over to the California Point to look at its coal-conveyor.

Q. What?

A. I was going over to the California [771—689] Point to look at the coal-conveyor, where this other coal-conveyor was and I was taken over by the coal-boat.

Q. California City Point, where were you going from? A. San Francisco.

Q. Where is that? A. Right across the bay.

Q. And how were you proceeding?

A. I was taken over by a towboat.

Q. By the ferries?

A. I was taken over by a towboat and saw towboats all around there besides that.

Q. Just a minute. Just answer my question. You proceeded, you made a trip over from San Francisco to the city point? A. Yes, sir.

Q. How many?

A. I went over there and back again.

Q. Went over and back again? A. Yes, sir.

Q. Is that the limit of your experience in San Francisco Bay of seeing a Lang laid cable in operation? A. No, sir.

Q. Well, what else have you seen in San Francisco harbor?

A. I was going to tell you and you stopped me.

Q. In San Francisco harbor?

A. I had made several trips out on a towboat as

(Testimony of George E. Ward.)

the man where I was staying with, Ed Waterman, was the chief engineer of that towboat and I had made several trips out with him on that towboat and I saw a Lang laid cable in operation.

Q. How long were you in San Francisco—you went back east, did you? A. Yes.

Q. How long were you in San Francisco?

A. About three weeks first.

Q. About three weeks? A. At first.

Q. And later? A. About a week.

Q. About a week? A. Yes, sir.

Q. So your trip east, that is from San Francisco to the east and return, occupied about six weeks; that is you had three [772—690] weeks in San Francisco first, and one week on the way back, that is a month, you have got a week going up to San Francisco from here and a week coming back, that is six weeks. Now, your trip east that is from San Francisco out east and back occupied about six weeks?

A. You didn't say how long I was in New York, how long I was in Paterson, New Jersey. I left here on the 23d day of May and I got back here about on I think the 23d of August, again. That was the time that I spent away from the Islands.

Q. Practically three months that you spent; out of that time you spent a month in San Francisco, three weeks when you got there and a week on your return? A. Yes, about that.

Q. And it took you practically two weeks going up and down from Honolulu to San Francisco?

(Testimony of George E. Ward.)

A. Yes, sir.

Q. That is right, is it not? A. Yes, sir.

Q. That makes six weeks out of those three months. Now, the other three weeks were spent traveling from San Francisco to the east, staying in those places and coming back to San Francisco.

A. Yes.

Q. Now, how many trips did you make, Mr. Ward, on these towboats in San Francisco?

A. I did not count.

Q. Well, give the jury an idea.

A. Oh, I made probably six or seven trips; I cannot tell you the exact amount that I used to go out with Mr. Waterman.

Q. And you went six or seven times?

A. Maybe six or seven times, I cannot tell exactly.

Q. And for what purpose did you go?

A. What is that again?

Q. For what purpose did you go?

A. Why, I went down with Mr. Waterman in the morning and we would take a trip; if a towboat was going to get hold of a ship or maybe hold of a barge or get hold of a scow and done all classes of work around there and I would stay on there until it made a trip and sometimes [773—691] two trips I would go out.

Q. You went on these trips because Mr. Waterman was your friend? A. Yes, sir.

Q. And you went there for pleasure?

A. Yes, I went there with him.

Q. For pleasure?

(Testimony of George E. Ward.)

A. On account of him, he was a friend of mine and I stayed with him and went out just for the purpose of seeing the towing there.

Q. Did you go out for the purpose of observing the operation of a Lang laid cable?

A. I went out for seeing how they towed there.

Q. Now, you say you had experience with a Lang cable in the east? A. Yes.

Q. Where was that? A. Handling coal.

Q. Where? A. That was in Paterson.

Q. How long were you in Paterson?

A. I think I was in Paterson maybe about a month, I think about a month, close to a month, anyhow.

Q. Out of the six weeks occupied from San Francisco going east and back you lived in Paterson and—

A. I lived in Paterson and stayed in Paterson, but I used to go over one day to New York and stay with my cousins there; I used to go over to Brooklyn and stay with my cousins there, and I would stay in Paterson with my uncle and my aunt, that is where we were living.

Q. What was the coal-conveyor that you saw in Paterson? A. For the purpose of a railway.

Q. What railroad? A. The Erie Railroad.

Q. Erie Railroad? A. Erie Railroad, yes.

Q. And what cable were they using there?

A. They were using the Lang cable.

Q. And what observation did you make of it there, what have you gone—what brought you there?

A. Why, I took an [774—692] interest in coal

(Testimony of George E. Ward.)

handling and I was where they were hauling this coal to the bunkers and I watched that and I saw the Lang rope out there, but that rope didn't make no curves, it was a straight line.

Q. It made no curves? A. No, sir.

Q. It was a straight line? A. Yes, sir.

Q. Now, you say that you observed the operation of that cable on the drum?

A. They had a large drum, yes, sir.

Q. You observed the operation? A. Yes, sir.

Q. For what purpose?

A. Why, to see how they worked that cable and see how the whole coal-conveyor was worked.

Q. Well, you didn't look at the drum?

A. Well, it was in my trade, Mr. Stanley, and I ain't going to look at the shelf to see what kind of machinery they were using, so I went and examined the machinery, too.

Q. Under what circumstances did you examine—did you observe the cable?

A. Because I wanted to see what kind of cable they used.

Q. That is what you were looking for, to see the cable, what cable they used?

A. Yes, I had experience down at the coal-conveyor and I had seen what the difficulties was down there with the cable and I naturally wanted to see what cable they used.

Q. That is what you were observing, the kind of cable they used? A. Yes, sir.

Q. And that is all? A. That is all.

(Testimony of George E. Ward.)

Mr. STANLEY.—I submit there is no qualification.

Objection overruled. Exception. [775—693]

Mr. DOUTHITT.—(Resuming direct examination.)

Q. What is the difference, Mr. Ward, in the Lang laid rope and a Roebling steel cable such as was in use on the 8th day of July, as it goes around the drum. Explain it particularly and fully?

A. The difference between a Lang laid rope and a pliable Roebling rope is that the pliable Roebling rope will hug the drum, it has a tendency to hug the drum, whereas the Lang laid rope will not hug the drum, if it gets any slack at all it springs from the drum; it does not hug the drum and that is where it gets its tension, where it gets its friction for doing the hauling purpose, the pulling, and there is where the benefit of a pliable rope is received and for to get the same on a drum with the Lang laid rope you have to take on considerably more weight in your box so as to be sure to keep it hugging on the travel where the pliable rope all that is necessary is to take the slack around from the drum. There is the true difference between a Lang laid rope and a pliable rope.

Q. And that is the difference between the rope that is now in use on this coal-conveyor and the rope that was used at the time that you were hurt?

A. Yes, sir.

Q. Now, you say that the Lang laid rope has a tendency, as I understand you, to spring from the

(Testimony of George E. Ward.)

drum, did you say that? A. Yes, sir.

Mr. STANLEY.—Our objection goes to all of this as to the witness' qualifications.

Mr. DOUTHITT.—Due to what?

A. Due to the spring in the rope; it is not pliable, it is not flexible; it has a spring in it and it will naturally spring around; it is not a pliable rope for a cable.

Q. Can you take a piece of string, Mr. Ward, and illustrate by means of that string the difference between these two ropes? [776—694]

A. If one of the jury will simply hold that piece of string when I twist it. Now, that is a right-hand twist, turning that way is supposed to be a right-hand and I will twist that around right handed and I will twist this also right handed (illustrating).

Mr. COKE.—Are you twisting that as a Lang cable is twisted or as a Roebling cable is twisted?

A. This is according to the Roebling laid rope, that is why I am twisting the strands right handed.

Q. That is the right-hand Roebling rope?

A. Yes.

Mr. SUTTON.—I understand the Roebling rope is made both right and left handed.

A. Yes, and this one that I am explaining is a right-hand Roebling rope. Now, you see—let go of that. Now, it went that way naturally of its own accord. You will notice, now, that the strand is running left handed, whereas the twisting of the strand is twisted right handed and it naturally goes there, it has to, it don't make you hold it in that

(Testimony of George E. Ward.)

position, and I will let go and you will notice it will not come loose. Now, in making the left-handed rope I will have to make it the opposite way.

Mr. DOUTHITT.—Take it easy and do it slowly.

A. This strand has been made right hand, so I will have to untwist it again. Will you give me a piece of manila rope, so that I can take the fibres. I would simply have to do that. I will make you a right handed, that will act just the same as a left-handed one in the opposite direction instead of making it a left-hand rope a right-hand rope with a lay of a Lang rope. You will see the difference of the lay of the rope (illustrating by twisting a string). This is going right handed. Now, while I have showed you before that this will naturally turn to the left of its own accord, while I have to force that to make it a right to go against its own nature. I have to force. [777—695] that right handed now that is forcing it over.

Mr. COKE.—Mr. Ward, are you twisting that cable in the same manner that a Lang laid cable is laid?

A. The Lang is twisted left. I am not saying that the Lang rope is twisted right, but I am showing you the same thing forcing that to go against its own nature, showing it with a right hand instead of a left hand. If you get me a piece of rope I will show it.

A. JUROR.—It will go the same way if it is twisted in a right-hand direction?

A. It will be made forcing it over instead of let-

(Testimony of George E. Ward.)

ting it take its own natural way.

Q. That is the way that the Lang cable is twisted, the other way though?

A. Now, that will explain the difference between the Lang rope and the common rope. Now, that has also a tendency to spring. Do you see the spring in that now?

Q. If it is wound around the drum if slack is given it will spring out? A. It has a spring.

Q. Even if pulled tight on the drum you say the spring is right there, what causes the spring?

A. That spring is forced there.

Q. And what is the purpose, Mr. Ward, of that spring?

A. It makes this whole cable harder than a pliable cable. A pliable cable is annealed, that is it is softened, it is pliable, whereas the Lang laid rope is hardened and there is a spring. You cannot wear a Lang laid rope as quick as you can a pliable rope.

Q. That spring is there for some purpose. When wound around the drum that spring is there for some purpose?

A. That spring is not there for meeting that spring for the purpose of the drum.

Q. No?

A. No, sir, it was made for the purpose of wear, to prevent wearing so quick, because it is not annealed. And there is a big difference between two cables, you might as well compare those two cables now that we have in illustration [778—696] as a piece of lead wire with a piece of steel wire; or take a

(Testimony of George E. Ward.)

piece of copper wire, compare it with a piece of steel wire, we have the difference right there before our eyes. Now, there is the difference that I am trying to explain to you.

Q. What makes that difference is simply the method or operation of winding it?

A. Winding and the hardness of the steel wire, it is not as soft as the pliable wire, different nature.

Q. They are both steel, though?

A. Yes, both made of steel; you can have annealed steel and hardened steel.

Q. What kind of a core have they in the Lang laid cable?

A. I would like to go down to the coal-conveyor and take something and pry it open and see. There are cables with a steel strand core, there are some with manila core, there are some with hemp, there are even some with cotton, that makes all the difference in the cable being pliable and soft.

Q. You don't know whether that steel core or wire core is in the Lang laid rope?

A. No more than I do of any cable that you show me now without my prying it open to see what kind of a core is in it. Here we have one open, now that I can see that is manila, I think.

Q. Then, you don't know that the flexibility arises from the fact that one is wound around the core or hemp or manila, and the other wire?

A. But I do know that if it had a steel core in place of a hemp or manila that it would be still

(Testimony of George E. Ward.)

stiffer, still greater stiffer than if it had manila or hemp.

Mr. STANLEY.—I move that the answer be stricken out as not responsive to the juror's question.

The COURT.—It is so ordered.

Mr. DOUTHITT.—If the Lang laid rope has a steel core, what would the tendency be as to—would the spring in a Lang laid rope with a steel core be as much as it would with a Lang [779—697] laid rope with a hemp or cotton core?

Objected to as the witness has shown no qualification.

Objection sustained.

The WITNESS.—Your Honor, may I speak now.

Mr. DOUTHITT.—Do you wish to explain anything?

The COURT.—What is your statement?

A. No, your Honor, it is only what I explained so you will thoroughly understand that. I explained two ways of getting a spring in a wire, in the first place I made this little wire by hand, this little cord by hand and I showed how, by forcing anything against its nature, that will make a spring. That is one thing causes spring. Then in a different cord that takes on a spring, then I was asked the question about this Lang rope. I have not seen that Lang rope, the core, and I explained to you all that if you brought me a piece of cable and tied its end I don't know what's inside of it. The only way that I can find out is to pry it open.

The COURT.—You don't know what the core of

(Testimony of George E. Ward.)

the cable at present in use on the coal-conveyor is?

A. No, sir.

Mr. DOUTHITT.—In a flexible steel wire, such as was in use, a steel cable such as was in use on the 8th day of July, 1912, Mr. Ward, I will ask you whether such a cable would or would not have a tendency to hug the drum?

Objected to as not rebuttal.

Objection overruled. Exception.

(Last question read.)

A. Yes, it has a big tendency of hugging the drum. Can I explain more in regard to that in that cable?

Mr. DOUTHITT.—Yes, but why?

A. Because it is a flexible cable, there is no spring to take away after the tension has been put on and pulled taut there it hugs the drum very tight and there is a no spring there for to release that hug. Besides [780—698] that I want to explain to you that was a cable, that the parts of the strand had all been cracked, these little wires had all been cracked, that made that cable much more pliable still, because it was only the center or the inside of these strands which was holding together, it *is* was not these strands that you see it now on the cable, because they are parted and separated and there are twelve outside of seven in every strand. Therefore, there has only been twelve of every strand released, that makes that cable far more pliable and easier bent. In other words, there has been taken from that cable, six times twelve, which is seventy-two wires, more or less parted all around, still there re-

(Testimony of George E. Ward.)

mains a balance inside there that have not parted and that makes that wire far more flexible and pliable.

Mr. DOUTHITT.—Now, Mr. Ward, in the event of a Lang laid cable being used on this coal-conveyor we will assume that a Lang laid cable is in use on the coal-conveyor in the same manner in which it was in use—is in use to-day or in use at the time you were injured; if the cable is stopped and the box is raised, I will ask you whether in your opinion, there would be any slack on the top of the coal-conveyor at the scale-house and if so, why?

Mr. STANLEY.—We object on the ground that the witness has not been shown qualified to speak.

Objection overruled. Exception.

(Last question read.)

A. Yes, sir.

Mr. SUTTON.—That is a Lang cable?

A. In raising this box that spring is here and it is also here and then it extends around the drum. Naturally there is four turns around the drum and as they lift the box that spring starts going and it springs all around, consequently the spring comes up to the top here, and [781—699] then the sag between every dolly will naturally take what it naturally can get and there you will find slack, but I do not think as these men was here as witnesses speaking of five this way and five that way, that they did not find no five inches down there.

Mr. STANLEY.—I move that that be stricken out.

(Testimony of George E. Ward.)

The COURT.—It is so ordered.

Mr. DOUTHITT.—Now, Mr. Ward, you observed that there was a—did you observe whether or not there was a belt used in connection with that motor which operates the coal-conveyor on your visit there yesterday? A. Yes, sir.

Q. Is has been testified here that the belt—you could move the belt or reverse the motor, you could turn back the drum by means of moving the belt; that could be done, could it? A. Yes.

Q. Could that have been done, Mr. Ward, with the engine—the condition of the engine was on the 8th day of July, 1912?

A. Do you mean if a steam engine was there in place of a motor and belt?

Q. Yes. A. No, you could not do it.

Q. Why not?

A. Because you have no chance to pull back, there was nothing to pull back with. There was nothing to pull back with, besides you have the piston to contend with.

Mr. STANLEY.—Have what?

A. Have the piston to contend with pressing that you *cannot back*.

Mr. DOUTHITT.—Was there any belt in use and operation at the time that you were injured on that machine? A. No, sir.

Q. On the engine. What is the difference between the machinery and the appliance as they exist now and the machinery and appliances as they existed at the time you were injured?

(Testimony of George E. Ward.)

A. Why, they have discarded the piston, the piston-rod, the cross-heads, the cross-head pins, the connecting rod, the crank-pin, the crank-shaft, it has all been discarded and they [782—700] have added on another shaft with a large pulley, three feet in diameter, onto this here with a pinion on for to turn the drum and that belt is run from this here three-foot pulley onto about a ten-inch pulley, between nine and ten, I did not measure it but it looked that small to me on the motor.

Q. And in regard to the power what is the difference?

Objected to as already asked and answered.

Objection sustained.

Mr. DOUTHITT.—What is the difference in regard to the weight at the box as it exists now, the time that you visited the coal-conveyor and the weight as it existed at the time you were injured?

Mr. STANLEY.—What do you mean as to the weight?

Mr. DOUTHITT.—The entire weight, what you call the weight or box, the pulleys and so on, do you understand that, Mr. Ward?

A. I understand you in two ways, you asked me if it was the pulleys, the same pulleys and box, the same box and then there is an addition to that box, can I explain that?

Q. Yes, I want you to explain it, the difference?

A. Yes, they have been filling in weight.

Q. What is that?

A. They have been putting in weights in the box.

(Testimony of George E. Ward.)

Mr. STANLEY.—Have you seen that, Mr. Ward?

A. What is that?

Q. Have you seen them putting in weights?

A. No, I saw the weights in the box.

Mr. STANLEY.—I move that the answer be stricken out.

The COURT.—It is so ordered.

Mr. DOUTHITT.—What is the condition of the weight to-day, the weights in the box compared with the condition as it existed on the 8th day of July, 1912? A. There is more weight in the box.

Mr. STANLEY.—That is objected to. [783—701]

Objection overruled.

The COURT.—Answer the question.

A. There is more weight in the box.

Mr. DOUTHITT.—And what does that weight consist of, do you know?

A. Scrap iron we call it, pieces of scrap iron and all kinds of iron they have thrown it in there.

Q. Do you *you* know from your experience on coal-conveyors and your knowledge of Lang laid ropes, Mr. Ward, whether it is necessary to have a greater weight which takes in the slack automatically in the box in the use of a Lang laid rope than in the use of a flexible steel cable such as was in use of the 8th day of July, 1912? A. Yes.

Mr. STANLEY.—I move that the answer be stricken on the ground that the witness has shown no qualifications.

Objection overruled.

(Testimony of George E. Ward.)

Mr. SUTTON.—And not proper rebuttal.

The COURT.—Objection overruled.

Exception.

(Last question read.)

A. Yes, sir, you have got to add weight where you have got a Lang laid cable in use, because you would have to put on weight to overcome that spring that is in the cable for to make it hug the drum. You will have to have pulling on that tail rope or the slack part of the rope coming from the drum, you would have to have more tension on that to make that hug to overcome the spring that is in the cable.

Mr. DOUTHITT.—Now, Mr. Ward, it has been testified here by Mr. Young that in his opinion that it was impossible for the cable at the time of your accident to be off the pulleys—no, at the time that he examined the cable it was impossible for that pulley which is, as I understand, is a Lang laid rope, the cable which is, as I assume, a Lang laid rope to be off the pulleys [784—702] in the manner which is described by the witnesses. Now, I will ask you, Mr. Ward, with the use of a Lang laid rope whether you would expect—whether the cable could get off in your opinion, whether the cable could get off the pulleys in that manner?

Objected to on the ground that the witness is not shown to be qualified.

Objection overruled. Exception.

A. Why, yes, the Lang laid rope having such a stiffness in it, it would not have the tendency of going around like that because it would have such a short

(Testimony of George E. Ward.)

turn to make on this side of the pulley. We have one of the pulleys right here. To bend the Lang rope that way why you would have an enormous strain on it, it is so stiff and hard, whereas the pliable rope as at the time of my accident it would naturally itself go that way.

Mr. STANLEY.—We object to that latter part as not responsive.

Mr. DOUTHITT.—That may go out.

The COURT.—The latter portion of his answer may be stricken out.

The WITNESS.—Your Honor, may I speak.

The COURT.—I think not, just answer the questions put to you, Mr. Ward.

Mr. DOUTHITT.—Mr. Ward, do you remember a conversation which you had with Mr. Gedge at your home at 801 or 803? A. 803 Young street.

Q. In this city? A. Kinau street.

Q. Kinau street about two or three weeks after you left the hospital? A. Yes.

Objected to as not proper rebuttal, no foundation having been laid.

Objection overruled. Exception.

Mr. DOUTHITT.—Did you have any conversation with Mr. Gedge [785—703] at your home at 803 Kinau street, about two or three weeks after you left the hospital? A. Yes, sir.

Q. Do you remember what that conversation was?

A. Yes, sir.

Q. What was the conversation, Mr. Ward?

A. Mr. Gedge came to the house and I was laying

(Testimony of George E. Ward.)

on a cot in the dining-room and he came to see me and he spoke about Mr. Kennedy taking control of the coal-conveyor away from him from being superintending engineer and placing Mr. Sheedy in his place. I asked him why and he said I don't know why. He says I can't say why Kennedy takes me away from the coal-conveyor after all the experience that I have had with that coal-conveyor and run it ever since it started discharging and loading boats and now he has placed Mr. Sheedy, a man who does not know anything about the coal-conveyor in my place.

Q. That was the conversation?

A. That was the conversation, sir.

Q. I will ask you, Mr. Ward, if you had any conversation with Mr. Gedge at the time when the conversation—when the “Guernsey,” the ship “Guernsey” first came to Honolulu on the deck of the “Guernsey” relating to a dispute between the captain of the “Guernsey” and Mr. Gedge?

A. Yes, sir.

Objected to as not rebuttal, as incompetent, irrelevant and immaterial, and an attempt to impeach the witness on immaterial matters.

Mr. STANLEY.—It is too remote, the first arrival of the “Guernsey” was four years ago.

The COURT.—The objection is sustained on the ground of remoteness.

Exception. Exception allowed.

Mr. DOUTHITT.—Mr. Ward, it has been stated here by Mr. Gedge that it was pursuant to your

(Testimony of George E. Ward.)

recommendation that Mr. Akina was promoted as a luna on board the coal-conveyor, on top of the [786—704] coal-conveyor, I will ask you whether or not that is so?

Objected to as not rebuttal and immaterial.

The COURT.—The objection is sustained on the ground that it is not material.

Exception. Exception allowed.

Mr. DOUTHITT.—Mr. Ward, it has been testified in this case by Mr. Muirhead that he was in the habit of coming to the coal-conveyor every day, two or three times a day and at least once a day. I will ask you, Mr. Ward, if while you were there as the foreman of the coal-conveyor, whether Mr. Muirhead was in the habit of so visiting the coal-conveyor or did visit the coal-conveyor?

A. No, sir, he was not in that habit. I have discharged boats there, been on board the ship which has taken five and five and a half days and I have never seen Mr. Muirhead down near that coal-conveyor. Then there is times when I have seen him once while the coal-boat was in, he would just merely say good morning and maybe ask me how much coal was in this hold or something like that, then he would go away, off he would go. But I have discharged boats when he has never been near the coal-conveyor.

Cross-examination of GEORGE E. WARD.

Mr. STANLEY.—I understand from what you say that there were days that you would not see Mr. Muirhead there at the coal-conveyor?

A. I said that I had discharged boats there that

(Testimony of George E. Ward.)

took five days and never seen Mr. Muirhead down around the coal-conveyor.

Q. Never seen him? A. No, sir.

Q. Are you prepared to swear that Mr. Muirhead was not around [787—705] the coal-conveyor or any part of the coal-conveyor during these five or six days that you are talking about?

A. I have not seen him at the top of the coal-conveyor, I seen him on board the ship though.

Q. Are you prepared to swear that he was not there?

A. I say that I did not see him around there.

Q. And that is all. Now, Mr. Ward, you testified to examining the weight down here and finding that it was heavier or had more iron in it more than there was at the time you were hurt, that is right, is it?

A. Yes, sir.

Q. When did you examine the coal-conveyor, the weight, to see what was in it? A. Yesterday.

Q. What did you find in it?

A. I seen the iron in there.

Q. And at the time you were hurt, what was in it?

A. There was nothing in it.

Q. Do you mean to tell the jury that this wooden box down there, that there was nothing in it at all, and it weighed five or six hundred pounds?

A. Yes, sir; that is what I mean.

Q. And nothing in it?

A. There was no iron in it, just the weight of the box and the sheave.

Q. Nothing whatever in it?

(Testimony of George E. Ward.)

A. No, sir; there was nothing whatever in it.

Q. And did you estimate yesterday the weight of the iron that was in it?

A. I saw iron in it, I told you.

Q. I asked you, did you estimate the weight of it?

A. No, sir; I did not estimate the weight.

Q. So that you cannot say what the difference is to-day from what it was on July 8th?

A. Not exactly, no.

Q. Well, approximately?

A. Well, I can say that it weighed more than when I was down there.

Q. That is all that you can say? A. Yes, sir.

Q. Now, Mr. Ward, I understand, you have never seen either [788—706] the Roebling cable or the Lang cable, that is right, is it not, the Lang cable manufactured?

A. No, I have never seen one manufactured.

Q. Never seen either of them manufactured?

A. No, sir.

Q. Can you tell from an outside investigation of a cable whether it is annealed or not?

A. No, I can tell by trying it by hand.

Q. How do you mean?

A. By taking and trying it, bending it.

Q. You can tell whether it is annealed or not?

A. Yes, whether there is spring in it or not.

Q. You know what the process of annealing is?

A. Yes, annealing means making soft, to anneal means taking the temper out.

Q. And how is that done?

(Testimony of George E. Ward.)

A. By heating and gradual cooling, not dipping into cold water or anything, cooling suddenly will bring temper.

Q. Are you prepared to swear that Roebling cable is not annealed? A. Is not annealed?

Q. Are you prepared to swear that Roebling cable is not annealed, and that Lang cable is?

A. The Roebling cable, the pliable cable, is annealed cable.

Q. And is not the Lang cable a pliable cable?

A. No, it is not a pliable cable, it will not,—it is stiff, it has spring in it.

Q. Do you mean it is like a bar?

A. No, I don't say it is like a bar.

Q. Is it not a fact that both the Lang cable and Roebling cable are both pliable and both flexible?

A. I told you that the Lang cable is not a pliable cable; it is not called a pliable cable.

Q. What do you mean by pliable?

A. That it will bend [789—707] and stay there, pliable.

Q. Do you mean to tell the jury here that the cable in operation to-day on the coal-conveyor is not a pliable cable, Mr. Ward? Answer my question.

A. I am answering your questions.

Q. Do you testify now that the cable that was in operation there which goes around these pulleys, and is in use on that coal-conveyor is not pliable?

A. It has a spring in it.

Q. Answer my question, is it pliable?

A. Why, you can take a piece of steel rod with a

(Testimony of George E. Ward.)

little temper and it is pliable.

Q. I am not asking you about steel rods, but I am asking you whether or not the cable now in use is pliable.

A. You asked about the word pliable. A clock spring is pliable, there is temper in it, it is tempered.

Q. Is not the difference between the Roebling cable and Lang cable that one is more pliable than the other, more flexible than the other?

A. Yes, it is more pliable, but there is a difference in temper between the tempered spring and annealed spring.

Q. But it is a question of degree between being flexible and pliable?

A. There is a difference in a spring that has a tendency to go back to its original shape whereas an annealed one will not go back to its original shape, it is not the same thing for every spring down there will come back to its proper shape again, where with this annealed steel or iron it will not come back after the once squash down, that is the difference.

Q. Do you mean the Lang cable you cannot bend it down say as much as this?

A. I did not say you cannot bend it.

Q. And it won't go back?

A. I will even state that you cannot bend a wagon spring. The Roebling cable I told you that it won't go back to its original position. A spring will spring down [790—708] as far as you bend it and when you let go it immediately goes back to its original position, that is, the spring and the temper.

(Testimony of George E. Ward.)

Q. Is it not a fact that you cannot run a coal-conveyor of this kind with these curves without a flexible cable? A. Without a flexible cable?

A. Yes.

A. Why, it would be far better for you to use a flexible cable.

Q. Is it not a fact that you could not run a coal-conveyor down there with curves unless you had a flexible cable. Is it not a fact that you could not run a machine of that kind where the thing has got to go around curves and trolleys and everything else, unless it is flexible; that is a simple question?

A. Your question is whether—unless it is flexible, yes, if it is flexible you can run it there.

Q. And if it is not you cannot run it?

A. Certain you cannot run a piece of tool steel tempered hard around a curve.

Q. You say, Mr. Ward, that the Roebling cable will hug the drum, what do you mean by that?

A. What is that again, please?

Q. You say the Roebling cable will hug the drum; what do you mean by that?

A. It will hug the drum just the same as I am squeezing now (illustrating), it will hug the drum the same as you would hug a girl, I guess.

Q. I have never had as much of that as you have had, you know. You are a married man, aren't you?

A. That is another question; that is my business. I am not.

Q. Now, by hugging the drum it will stay by the drum; it will stay close to the drum.

(Testimony of George E. Ward.)

A. It hugs the drum.

Q. Is that while it is in operation?

A. While it is in operation and when you stop it, it still hugs. It is hugging in operation and even when the engine stops it hugs.

Q. And how about the Lang cable while it is in operation [791—709] will that hug the drum like you hug a girl? A. It does to a certain extent.

Q. Then when you state that the Lang cable would not hug the drum you do not mean that, but you mean not as much as a Roebling cable?

A. No, when you lift the box it will take the hug away; it will pull it away.

Q. When you testified in direct examination that the Lang cable will not hug the drum what you meant was it will not hug the drum to the same extent as the Roebling cable?

A. That *it* it; it will not to the same extent as the Roebling cable.

A JUROR.—That is providing that the weight, the balance weight on the two cables is the same, is it not?

A. Yes, providing that the weight is the same on the Lang as it is on the Roebling it will not hug. The Lang will not hug so good as the Roebling will.

Mr. STANLEY.—I thought you testified that in order to keep the friction on the Roebling cable, keep the tension on, you do not need as heavy a weight as you would in order to keep the tension on the Lang cable?

A. No, Judge, the opposite of what you said.

(Testimony of George E. Ward.)

Q. I understood you to say that you didn't need as heavy a weight to get the tension on the Lang cable as you do on the Roebling cable?

A. Yes, now you state it correctly before you stated the Lang rope.

Mr. DOUTHITT.—That is the case for the plaintiff.

[Testimony of J. M. Young, for Defendant (Recalled in Rebuttal).]

Direct examination of J. M. YOUNG, recalled for the defendant in rebuttal.

Mr. STANLEY.—Mr. Young, it has been testified frequently in [792—710] this case that there is an essential difference between the Lang laid cable and the Roebling cable, the difference being that the Lang laid cable is stiff while the Roebling cable is pliable and flexible and also that the Roebling cable by virtue of this difference has a tendency to hug the drum while the drum is in motion and also while the drum is at rest. Now, in your opinion, will you state to the jury whether or not there is any essential difference between the Roebling cable and the Lang laid cable. They are both the same diameter cables. In other words, calling your attention to the cable that you observed on the Inter-Island Steam Navigation Company's coal-conveyor plant at the time of your examination about a year ago which, as I understand, was a Roebling cable similar to the one on this table except it was a right hand instead of left hand, and also call your attention to the cable now in use on

(Testimony of J. M. Young.)

that conveyor which as I understand is a Lang laid cable?

Objected to as incompetent, irrelevant and immaterial and not sur-rebuttal.

Objection overruled. Exception.

A. Well, in order to make a proper answer to that question I should have to describe the two different kinds of cables.

Q. Proceed with the explanation?

A. The Lang laid cable is manufactured by nearly all the cable companies. It is manufactured by the Roebling people, by the Trenton Iron Works, by the American Steel & Wire Company, by the Waterbury Company, and a number of other companies, and it is simply a style of cable that was devised by a man named Lang, an Englishman or a Scotchman, I forget now which, in order to obviate a certain wear and to produce a more symmetrical cable after it had been worn down and its essential difference from an ordinary standard cable is that the strands, the wires, are laid into the strand in the same direction that the strands are laid into the rope. [793—711]

Q. Well, on that point, what is the difference then in that particular in a Lang laid rope or a Roebling cable?

A. Well, the Lang laid cable may be a Roebling cable.

Q. I mean the Roebling cable that was used at the time? A. You mean the standard cable?

Q. Yes, standard cable?

A. The standard ordinary cable, the difference is

(Testimony of J. M. Young.)

that in a standard cable the wires are not laid in the same direction that the strands are laid that then makes it possible of course, for one wire to be bent over another one in the process of use of the cable so that it is subject to additional wear, that is more wear than a Lang laid cable would be subject to. It is evident that the wear on a Lang laid cable is less for the reason the wear is more uniform throughout the entire length of the wire it presents a longer surface for abrasion against the drum and rollers, so that there is more surface to wear on, therefore, the wear at any individual spot is less. Those are the essential differences. Now, in two cables—rather if a cable is made up out of certain size wire into three-quarter inch rope on the standard plan, and another rope is made up to the same size wire, the same number of wires in a Lang laid rope, the only difference then will be in the rope and it is generally conceded that a Lang laid cable made up under the same specifications as to the number of wires, number of strands, is somewhat more flexible than a standard cable.

Q. Have you any authority for that statement, Mr. Young; if so, give it? A. Yes, I have it.

Q. Please produce it.

A. It is in those books there.

Mr. DOUTHITT.—We object to it on the ground that the witness has not shown his qualifications with reference to a Lang laid cable.

A. The word Lang laid cable was never mentioned, if I may [794—712] be permitted to say so, as I

(Testimony of J. M. Young.)

recall it; I mentioned about a Lang laid cable, I think I recollect about that and stated there was a Lang laid cable in operation. In justice to myself I should make a statement about that. I have been using Lang laid cable ever since I have been connected with cable work. They frequently come in every now and then; there is a Lang laid cable used for different purposes. I have spliced them and used them along with other cables, and if I am competent to speak about a Lang laid cable—it seems to me I should be competent to speak about a Lang laid cable. I don't know what constitutes qualification.

Objection overruled.

A. One reason that the Lang laid cable is not used more than it is used is because it is a more expensive cable to manufacture; it costs more. And another reason is that it is a more difficult cable to splice on account of the lay of the wires and strands going in the same direction. It is a very difficult cable to splice and the splice is more apt to break loose and come out and it causes more trouble in doing it than the ordinary cable. That is one of the difficulties that militates against its more general use. I have here a catalogue of the Trenton Iron Company of the date of 1902, which has a paragraph descriptive of the Lang laid cable and Lang laid rope, and if you wish—

Mr. DOUTHITT.—No, we don't want anything of that kind.

The COURT.—You stated that you had authority

(Testimony of J. M. Young.)

that the Lang laid cable is rather more flexible than a standard cable.

A. It is just a paragraph about a dozen lines, I suppose.

Mr. SUTTON.—It is not a question about the length of the line. It is not recognized that a catalogue is standard authority.

A. Suppose we take Kent; that has been admitted, I suppose. [795—713]

Q. That is Kent's pocket-book again?

A. Yes, this is Kent's pocket-book. This edition is 1901. This is a somewhat earlier edition than the one that Mr. Douthitt referred to, page 229.

Q. What page, Professor? A. 229.

Mr. DOUTHITT.—We do not understand that this is Mr. Young's experience; he is simply reading this from books.

Mr. SUTTON.—We asked Mr. Young to produce authority and he is now referring to the same work that Mr. Douthitt referred to.

The COURT.—It is recognized as authority among engineers, is it not?

A. I don't know whether I would describe it in that way. It is certainly an authority. I don't think you will find a mechanical engineer in America who has a standing who has not a copy of Kent, perhaps several editions of it because it is a book that is issued extensively and in order to keep up with the latest practice you certainly must have a copy of Kent.

Mr. COKE.—The statements made by the witness are not in response to any question.

(Testimony of J. M. Young.)

The COURT.—It was in answer to my inquiry as to whether Kent was a standard work on engineering. Is there any objection to the use of this Kent's pocket-book?

Mr. DOUTHITT.—None.

A. (Reading from Kent's Pocket-Book.) "Lang laid rope:

"In wire rope, as ordinarily made, the component strands are laid up into rope in a direction opposite to that in which the wires are laid into strands; that is, if the wires in the strands are laid from right to left, the strands are laid into the rope from left to right. In the 'Lang Lay,' sometimes known as 'Universal Lay,' the wires are laid into the strands and the strands into rope in the same direction; that is, if the wire is laid in the strands from right to left, the strands are also laid [796—714] into rope from right to left. Its use has been found desirable under certain conditions and for certain purposes, mostly for haulage plants, inclined planes, and street railway cables, although it has also been used for vertical hoists in mines, etc. Its advantages are that it is somewhat more flexible than rope of the same diameter and composed of the same number of wires laid up in the ordinary manner; and (especially) that owing to the fact that the wires are laid more axially in the rope, longer surfaces of the wire are exposed to wear, and the endurance of the rope is thereby increased. (Trenton Iron Co.)"

Mr. SUTTON.—Have you any other authority on that proposition?

(Testimony of J. M. Young.)

A. I have a work, the American Wire Rope, the American Steel & Wire Company, which is one of the subsidiary corporations of the United States Steel Corporation.

Q. Is that a catalogue or a work on the subject?

A. Why, that is a catalogue. In fact the smaller works are catalogues, but you understand that the manufacture of wire rope and also its use is a subject which has been developed in America to a much greater extent than it is in most other countries and for that reason information on its manufacture and use has to be obtained from the manufacturers and particularly Kent, himself, when he is gathering data for his hand-book, takes this information from the Trenton Iron Company or from the Roebling book.

Q. Even that being so we could not very well take the statements from the catalogue?

A. Well, in the same way that Mr. Kent has taken that cable which Mr. Douthitt produced yesterday on rope haulage, that was taken from Hunt's catalogue.

Q. It has also been testified in this case, Mr. Young, that the cable of the type in use at the time of Mr. Ward's accident, Roebling standard, six strand, nineteen wire, right-hand cable, was annealed and consequently the strands were soft and stayed in [797—715] the position in which they were set. Will you state whether or not—and will not return to the original position. I understood it was like a piece of lead. I think that was the illustration of the witness that the Roebling cable was so pliable that

(Testimony of J. M. Young.)

all you had to do was to bend it into position and it would stay. I may mention that it was so soft that it would not return to the original position, the testimony being that the cable was annealed and pliable and would not return to its position after being bent. Now, would you kindly state, Mr. Young, whether you know or not whether wire cables, either the Roebbling standard, whether built in the style of the wires, the strands being wound in the direction opposite to the direction of the winding of the wires or whether it is laid in the Lang lay whether either of those or both are annealed or not?

A. Well, I don't believe that an annealed wire cable could be secured from the manufacturers except by a special order.

Q. Why?

A. Cables are not ordinarily made of annealed wire, for this reason that the annealing process robs the wire of a very large proportion of strength and of all of its elasticity and those are very desirable qualities in a steel cable and the manufacturer would not put them out in that form unless it were on a special order and I can see no reason in this particular case of having an annealed cable, because it certainly would not give the length of life and not be so satisfactory. The process of wire manufacture, you understand, consists of drawing a rod of steel, a small rod of steel through a die, a hardened steel die, and the process of drawing hardens up the exterior portion of the wire in such a way as to increase its strength and also makes it more elastic, and for that

(Testimony of J. M. Young.)

reason the strength of the steel wire is very much greater in proportion to its area than an equal area of ordinary steel. A piano wire, for instance, which is high drawn wire, is of very high strength. Well, it [798—716] goes up as high as three hundred and fifty thousand pounds per square inch, and that is largely due to the process of wire drawing which increases the strength and rigidity and increases the elasticity and also very much the strength; it increases it very much indeed. Now, that being so, you can readily see that it would militate very much against the strength and usefulness of a cable to anneal it and I can see no reason for doing it; and so far as this particular cable is concerned I did not examine it to test it to see if it is annealed wire, but that phase of the situation never occurred to me because it would be such a foolish thing to do.

Q. Tell me this, Mr. Young, if such a wire, such as the wire in the cable at the time of Mr. Ward's accident had been annealed, if you bent it in any position, would it return to its original position as soon as the pressure was taken off or would it have a tendency one way or the other?

A. Well, if a kink were made in it the kink would remain in the wire and it would not return to its position so readily as one made out of ordinary cold drawn wire.

Q. But would there be any difference in the tendency of a Roebling cable standard make such as was in use at the time of Mr. Ward's accident, from a Lang lay rope such as is in use at the coal-conveyor

(Testimony of J. M. Young.)

plant at the present time in its tendency to hug the drum?

A. No, I don't think there would be a particle of difference. Of course, it is understood that a new rope, a rope which is brand new right off the coil will not behave quite the same as a rope that has been used and a rope that has been in use is somewhat more flexible than a new rope. Hence an old rope that had been in use would not have quite the same facility for slipping around the drum or in giving any trouble of that kind, because a new rope is also somewhat more slippery; it has a harder surface and it is somewhat more rigid. That applies to all classes of cables; that is a general rule. [799—717]

Q. From your knowledge of the Roebling and Lang lay cables, as I have referred to them, the standard three-quarter inch, from your knowledge of those cables, would you say that it would be possible or impossible for a Roebling cable used for eleven months or ten months and slightly worn on the outside with pieces of wire sticking out one-sixteenth to an inch from the cable, would it be possible for that cable to be put in the position testified by Ward as having been its position at the time of the accident?

Objected to as not sur-rebuttal.

Mr. SUTTON.—I wish to change the word possible to difficult.

Mr. DOUTHITT.—We object to it on the ground that it is not sur-rebuttal.

Objection sustained. Exception.

(Testimony of J. M. Young.)

Cross-examination of J. M. YOUNG.

Mr. COKE.—Mr. Young, the statement made by Kent that a Lang lay rope is inclined to flexibility—does not that mean that it is inclined to be springy?

A. No, not necessarily. I may illustrate that by another example. Suppose we consider a piece of soft cotton cord which would be extremely flexible; soft cotton does not have very much elasticity or springiness. We could also consider a piece of hemp cord, wound in a slightly different way that would also be flexible and would not have this elasticity or this quality or property of coming back into its original position or shape, form or outline. I don't think that those two qualities necessarily go hand in hand.

Q. Well, then it might not be so, but as a matter of fact it might be so, and that might be what is referred to by Kent; is [800—718] not that true?

A. Oh, no, Mr. Kent referred there to the matter of running over a sheave. You understand that cables in nearly all cases must run over a sheave or pulley in their use and a cable that will run around a pulley more easily will be subject to less wear, less friction, and will absorb less power in the operation. Of course, you understand that in a cable running around a drum or a pulley that the greater the stiffness or the greater the rigidity the larger the proportion of power absorbed in that way which is lost power. Even in a leather or a rubber belt that is present to a very high degree and a considerable portion of the power is lost by useless friction, and the one feature in connection with the Lang laid rope

(Testimony of J. M. Young.)

is to eliminate as much as possible that useless friction by having the fibres of the rope parallel to each other so that they do not cut or break one another. You understand that in a standard cable, a cable that can be easily spliced and cheaply manufactured itself, it is a definite fact that wires bent over each other the one wire bending over the other tends to cut the other wires thereby weakening the cable and lessening its life which is eliminated in the Lang laid rope and is not a question of elasticity at all because the elasticity is the quality of the individual wires which go to make up the cable.

Q. Well, you mean, then, Mr. Young, that if you bent a Lang laid cable it will tend to come back into its natural position more readily than one of what you call a standard made cable?

A. No, I don't mean to say that, their action in that respect would be about the same, I don't think that you can detect the difference. I think that they will remain in just about the same way, provided, that of course they are made up of similar wires and the same number of wires with the same kind of a core.

Q. Do you know how many strands are in the Lang laid cable?

A. The Lang laid cable as a rule does not have quite as [801—719] many strands as the ordinary cable, that is in the process of manufacture. It is more difficult to make a Lang laid cable with a high number of strands, consequently it is generally made with a somewhat smaller number of strands.

(Testimony of J. M. Young.)

In this particular rope, however, I could not say just what the number of strands is, because I have not cut it and counted the wires but if the wires are the same size throughout and the same diameter of cable and the same weight per foot, of course it would have the same number of wires.

Q. Well, now, Mr. Young, why is this cable more difficult to make than the ordinary one what you call the standard cable, what makes it more difficult to construct?

A. Well, it is simply a physical fact that a large number of strands roll always in the same direction, have a greater tendency to give difficulty in laying up. Of course, you understand, in the standard cable they knit each other together more readily, more perfectly.

Q. Their tendency is to hug each strand, the tendency is to hug onto the other on account of the way it is made.

A. Not to hug, I cannot say hug.

Q. Well, go together?

A. The strands cross over each other and then in case of pressure or movement in the cable these strands will see-saw back and forth over each other, which results in a tendency in the wires to cut themselves.

Q. Like the Roebling cable, the standard cable?

A. It has a greater tendency to interior fracture of the wires than the Lang laid cable.

Q. In the Lang laid cable the tendency is for it to flare apart, is it not, for instance, if you cut the

(Testimony of J. M. Young.)

cable; if you cut the Lang laid cable in two is not the tendency of that cable then, the strands of it to flare apart?

A. Well, any cable will tend to do that but that quality is somewhat greater [802—720] in a Lang laid cable.

Q. On account of the fact that the strands of the Lang laid cable have been forced over, the tendency is for them when the cable is cut, the tendency is for them to flare back into their natural status, is not that true? A. Well, that is true in any cable.

Q. Is it not more true in a Lang laid cable?

A. No, the same tendency is present in individual wires, but in an ordinary standard cable the wires are restrained more effectively by their adjacent contiguous neighbors holding them back, but the same tendency is there in the wire although in the one case it is somewhat more restrained than the other.

Q. Well, the tendency without regard to that, the fact still remains that the Lang laid rope would flare out and become more separated?

A. Well, I just answered that question a moment ago. I said, yes, that it was slightly more inclined to open up and that is one of the disadvantages of the Lang laid cable, and militates against an easy, quick, rapid and economical splice, just that quality in splicing the rope. It is desirable that the strands should lie together as well as possible so that in moving one of the strands the other two would retain their normal position more readily so that the

(Testimony of J. M. Young.)

cable might be spliced with greater facility.

Q. In splicing the Lang rope, cable the difficulty is that there is more strain in the strands, there is more disposition for them to get out of place?

A. Well, there is a greater disposition.

Q. And that makes it more difficult?

A. No, not to come apart, undersand there is a greater disposition for the strands to lie down together to close up the space.

Q. That is due to spring, is it not?

A. No, not necessarily, it is due a part of it to the surface of the wires and [803—721] to the fact that there is a restraining influence, if you consider a portion of this standard cable you find that the wires are bent in opposite directions and there are two opposed forces which tend to balance and make it all a more stable composition.

Q. That is it, and with the Lang laid cable that reason does not exist, is not that true?

A. It exists to a certain extent, the difficulty of placing arises in that the strands want to drop down and close up the space.

Q. Let me ask you further, Mr. Young, is it not a fact that a new cable is more springy, has more springiness to it than an old cable, didn't you make that statement all right?

A. I made the statement a number of times that a new cable presented a harder surface, more unyielding, and was more apt to slip on pulleys and drums than an old cable.

Q. And is it not slightly more springy?

(Testimony of J. M. Young.)

A. That must be qualified, you understand the springy quality of the cable depends upon the characteristics of the wire of which the cable is manufactured, and the springiness being a function of the cross-section will be in the same proportion as this is worn down and if it were made originally of a springy, hard wire and you continued to wear the cable down, *it* springy quality would remain in the proportion of its cross-section. Now, the facts are that in a Lang laid rope the strands themselves are not so apt to be broken and the springy quality would be proportionate to the number of wires that remain good, perfect, unbroken.

Q. Let me ask you there, Mr. Young, is it not a fact that every time one of the wires of the cable is broken by reason of use or any other cause, is it not a fact that the springiness of that cable is decreased to a certain extent?

A. Well, if the cable were made up say of a hundred wires and you broke one of them the total strength would decrease by one per cent.

Q. And the springiness of the cable would also be decreased, wouldn't it?

A. Well, not in the same proportion because [804—722] it is very likely that the wire broken is on the inside. Now, when the cable is stretched around the drum or put in a strained position there is a greater stress thrown on the exterior wires and they are the ones which give to the cable its springiness, because they are the ones that are stressed and that *if* a function that is rather surprising and it is

(Testimony of J. M. Young.)

a function that is employed to a very large extent all in the designs of steel booms and girders. We know that the stress occurs chiefly on the top and bottom of steel girders and the same is true in the cable, and there is some strain there and the cable's top and bottom are stretched to a maximum while the wires in the center are stretched to a minimum so that the springiness is not necessarily decreased if you break a wire in the center.

Q. Did you ever have occasion to reel up an old cable that had been used and was stranded throughout to reel it? A. Yes, many times.

Q. State, Mr. Young, whether that is more difficult to do than to reel a brand new cable?

A. Well, a new cable is always more difficult to handle in any way than an old cable.

Q. And the fact is that the tendency of the new cable is to spring away from the reel or from the drum over which it is being reeled to a far greater extent than that same tendency exists in an old cable, is not that a fact?

A. Well, it is due to a very well known quality. When a rope is first put in commission, the rope has not yet found itself, it is made up of fibres which have been placed together and they have not been knitted to a homogeneous cross-section and some wires are stretched somewhat harder than others and it is in more or less a strained condition considering the individual wires. After it has been in use for awhile and been pulled into shape and worn down, has found itself; in other words, it will give very much

(Testimony of J. M. Young.)

less trouble in coiling and uncoiling and of course a cable which has [805—723] been worn and in which a large number of strands have been broken, why its flexibility is somewhat decreased, that is a perfectly natural conclusion.

Q. Very greatly decreased, wouldn't it be, Mr. Young, if a cable that is stranded throughout the entire length and the strands sticking out, we will say, the wires sticking out from a quarter of an inch to an inch throughout the length of the cable, the flexibility would be very greatly decreased from that of a new cable, is not that true?

A. Yes, it would be somewhat less.

Mr. STANLEY.—That is our case.

A JUROR.—In regard to that box there, when you examined that and made any experiments with that plant a year ago, do you know or remember the net weight in the box?

A. Do you mean the exact number of pounds?

Q. No, the net weight?

A. Why, I did not examine the box carefully. I did not measure it or anything like that, I saw the weight there and as far as I know it is about the same weight as is on now.

Q. Did you look inside, Mr. Young,

A. No, I did not, I did not look inside, but considering the action of the box the way it was behaving and performing, the way it was discharging its duties I should say it was about the same weight as was there before.

Q. You don't know, you didn't examine it?

(Testimony of J. M. Young.)

A. No, I did not weigh it, I did not measure it.

Q. Did you measure it the other day when you were there?

A. No, I did not, in fact I could not swear to the exact weight of the box.

Q. Didn't you give the weight of the box in your testimony?

A. I gave the approximate weight of it.

Mr. COKE.—When you referred to the weight of the box, Mr. [806—724] Young, you took into consideration, also, the weight of the sheaves that were above it and the chain, the entire equipment that hung from the roof, the sheaves, the box and chain?

A. Yes, sir, I meant the entire weight of the whole mechanism, including pulley and all.

GEORGE E. WARD

vs.

INTER-ISLAND STEAM NAVIGATION CO.,
LTD.

The foregoing 725 pages constitutes the complete record of evidence and proceedings in the above-entitled cause.

J. W. JONES,
Official Reporter. [807—725]

[**Opinion of Supreme Court, Territory of Hawaii,
Filed March 24, 1915.**]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1914.

GEORGE E. WARD

vs.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Hawaiian Corporation.
ERROR TO CIRCUIT COURT, FIRST
CIRCUIT.

Hon. W. J. ROBINSON, Judge.

Argued February 15, 1915. Decided March 24, 1915.

ROBERTSON, C. J., WATSON and QUARLES,
JJ.

Master and Servant—Negligence—Defective Appliance.—If the master negligently furnishes unsuitable appliances for conducting his business by reason of which his servant is injured, he is responsible in damages to the servant for such injuries, although the latter may have been negligent, unless the negligence of the latter was the proximate cause, or a proximate cause, of the injury.

Same—Proximate Cause Question for Jury.—

Whether an act of negligence is the proximate cause of an injury is a question for the jury to decide where the evidence is conflicting; or where the answer depends upon matters of discretion, experience and judgment; and in all cases where more than one inference may be

reasonably drawn from the facts which the evidence tends to prove.

Same—Intervening Cause.—The master is not exempt from liability for an injury to his servant, caused by a defective appliance, by reason of an intervening act or cause, where the latter grew out of, was related to, and made necessary by, the negligence of the master in furnishing such defective appliance. [808]

Instructions—Interest of Witness.—An instruction which told the jury to take into consideration the interest of the plaintiff in the result of the suit when weighing his testimony was properly refused, especially as the Court had instructed the jury that in weighing the evidence of witnesses they should take into consideration the interest, if any, of the witness, in the result of the suit.

Verdict—Excessive Damages.—A verdict for \$13,000 damages held to be not excessive where the evidence shows that the plaintiff was a strong, healthy, robust man at the time of the accident, forty years of age, earning six dollars per day, and by reason of the injury complained of suffered a fracture of the skull, concussion of the brain, a central dislocation of the hip, a distortion of the spine, impairment of vision and hearing, considerably diminished earning capacity, and had continually suffered great physical pain; the assessment of damages being left, by law, to the discretion of the jury, whose verdict will not be disturbed unless so excessive

and outrageous, under the evidence, as to demonstrate that they permitted their passions and prejudices to mislead them into giving a verdict against the rules of law. [809]

Opinion of the Court by QUARLES, J.

At the conclusion of the evidence on behalf of the plaintiff (now defendant in error), at the first trial, the Circuit Court entered judgment of nonsuit, in favor of the defendant (now plaintiff in error), to review which, the plaintiff sued out a writ of error in this Court, and the judgment of nonsuit was reversed. We will here refer to the former decision of this Court (*ante*, page 66) as showing the material facts. An examination of the record now before us shows that the evidence is substantially the same so far as the plaintiff's case is concerned, as at the former hearing. Upon the return of the case a new trial was had and a verdict for \$13,000 damages rendered in behalf of the plaintiff; and, to review the judgment entered thereon, defendant has sued out a writ of error in this Court. In the former decision this Court held that the contention of the plaintiff that the negligence of the defendant in furnishing a cable which was burred and unsafe was the proximate cause of the injuries, which he sustained, should have been submitted to the jury, on the evidence, under proper instructions. The defendant has assigned a number of errors of law occurring during the progress of the cause, some of which have not been argued, some abandoned, and some of them relied upon for a reversal of the judgment now to be reviewed. The principal contention

of the defendant now, is, that the Court erred in refusing to give its request for an instructed verdict, basing this contention upon the ground that, under the evidence, the question as to the proximate cause of the injury was one of law to be decided by the Court, and not a question for the jury. It will thus be seen that the principal question before us is the same, in a different form, as that before us at the former hearing.

After full consideration we are of opinion that the former decision in this case is correct, under the evidence disclosed [810] in the record, and under the authorities. We therefore adhere to the former decision, and hold that the question of proximate cause was properly submitted to the jury. It is contended, with much earnestness, on behalf of the defendant, that the defective cable described in the former decision, was not of itself, dangerous; that after it came off the pulleys, and the engine was stopped, it was inert, and incapable of injuring the plaintiff; that it did not injure the plaintiff, and was not the proximate cause of the injury, and, at best, it only furnished the *occasion* for the plaintiff going to replace the cable on the pulleys. If the cable came off the pulleys by reason of its worn condition, as some of the evidence tends to show, and in doing so had struck the plaintiff and injured him, it would follow that the use of the cable in such condition was negligence, and the proximate cause of such injury. But, it is the duty of the master to furnish suitable and safe appliances for his servants to conduct his business with, and this duty is not fulfilled by sim-

ply furnishing appliances that may be used, but which, owing to their defective condition, are liable to be misplaced and thereby necessarily subjecting the servant to extraordinary risks by replacing them. In other words, the assumption of the ordinary risks of an employment by the servant does not extend to those risks arising from defective machinery or appliances, where, as in the case at bar, the defects are known to the master, and, at the complaint of the servant, he has promised the servant to replace the defective appliance with one that is suitable. The jury were justified in finding from the evidence three facts which are material to the issues in the case, viz., (1) that owing to the burred condition of the cable, strands of wire protruding from it from one-sixteenth to one-quarter of an inch, it had a tendency to climb up on, and run off, the pulleys; and, therefore, was not suitable for the purpose [811] for which it was necessarily used; (2) that the defendant promised the plaintiff to replace the cable with a new one, and failed to do so; and (3) that defendant's neglect to replace the defective cable with a new one, made it necessary for the plaintiff to leave his usual work and go upon the elevated track of the defendant (a height of about 25 feet) thereby incurring an extraordinary hazard which would not have existed if a suitable cable had been installed. The jury were also justified in finding that a man of ordinary care and prudence, under the circumstances, would naturally apprehend that the cable would come off the pulleys; and the foreman, Akina, being absent, under such circumstances

plaintiff would go and attempt to replace it; that being on an elevated trestle, 25 feet above ground, injury to plaintiff would probably result.

We will notice the principal authorities cited by the defendant to sustain the contention that the defective cable was not the proximate cause of the injury sustained by the plaintiff, and that that question should have been decided by the Court by instructing the jury to find for the defendant. In the case of *Carter v. Lockey Piano Case Co.*, 177 Mass. 91, the Court directed a verdict for the defendant upon the ground that the injury was caused by the negligence of a fellow servant of plaintiff while operating an elevator in failing to use a stopping cable or clamp, there being no negligence of the defendant in failing to supply suitable and safe appliances. In the case of *Mo. Pac. Ry. Co. v. Columbia*, 65 Kan. 390, the deceased had worked for the defendant seven years, the last five as fireman on one of its engines; during all that time the defendant had kept piled on its platform at Langley, where the accident occurred, a pile of grain doors, from eleven to fifteen in number, conspicuously placed from fifteen to twenty-two feet from the track, by which the deceased had passed [812] about six hundred times; along its lines the defendant, where there were grain elevators, kept piles of grain doors stored near such elevators, and at stations where there were no elevators (such as Langley), kept such doors piled at the station; the accident whereby deceased lost his life was caused by the grain doors being blown off the platform on to the track, by a violent storm, amounting to a gale;

no similar accident had ever occurred before on defendant's road; that the accident would not have occurred but for such storm. These facts were found in a special verdict by the jury, being submitted to them. The jury also found that the wind storm was not the proximate cause of the accident, but the negligence of the defendant in piling the grain doors on an exposed platform was the proximate cause, and found a general verdict for the plaintiff. There was no evidence to show how long the doors had been on the track prior to the accident, or that any officer or agent of the defendant knew that the doors were on the track. On appeal, the special verdict was treated as finding the material facts in favor of the defendant, and the Court held that the conclusion of the jury as to the proximate cause of the accident was inconsistent with the facts found, holding the accident to have been caused by the act of God, one which no reasonably prudent man would have anticipated, set aside the verdict and directed the trial Court to enter, in accord with the special verdict of the jury, a judgment in favor of the defendant. In *Leavitt v. Ry. Co.*, 89 Me. 509, the injury resulted from the independent act of a contractor, not of the defendant, and the controlling principle of the decision is that an employer is not responsible for the negligent acts of a contractor, or his servants, when they act independently and are not under the control and direction of the employer. In the case of *Empire State Cattle Co. v. Atchison, etc., Ry. Co.*, 135 Fed. 135, 140, plaintiff sought to recover damages for loss of [813] cattle in an unprecedented flood, on the

ground that it had been negligent in delaying the shipment, and claiming that if there had been no delay in making the shipment, the cattle might not have been lost. There, the Court properly held that the defendant was not liable for an injury caused by the act of God which it could not reasonably have apprehended. We do not regard those cases as in point here.

We will cite a few authorities in addition to those cited in the former opinion in this case, which recognize, and, as we think, sustain the principles applicable hereto. In *Peoria, etc., Ry. Co. v. Puckett*, 42 Ill. App. 642, a brakeman was required to disconnect cars while they were in motion, and although held to have assumed the extra hazard of doing so, the Court said, at page 649: "If a brakeman be required to thus do such work, and while attempting to perform it with care and prudence commensurate with the increased danger of such duty he is injured, not by some peril attendant upon the manner of doing the work, but by a danger arising from a failure of the railroad company to use reasonable care to discharge a duty incumbent by law upon it, no reason is preceived why a recovery may not be had for such injury." "It is the risk of ordinary perils incident to the service that the employee assumes, not the hazards of extraordinary risks added by the failure of the employer to perform the duty enjoined upon him by law." (*Rogers v. Leyden*, 127 Ind. 50.) In *Knapp v. Ry. Co.*, 65 Iowa, 91, 95, the defendant had permitted its roadbed to get into bad condition, being lower at one place than it should be, whereby a train

was derailed, and its servant, an engineer, was injured. It was claimed by the defendant that the negligent manner in which the engineer used the lever was the proximate cause of the injury. The Court said: "True it is that reversing the lever is one of the ordinary hazards of the plaintiff's employment; yet, if the negligence of [814] the defendant required such act to be done at that particular time, and the plaintiff was not guilty of negligence, but, on the contrary, acted prudently, with due regard for his own safety and the safety of others, then the defendant is liable, because the negligence of the defendant is the proximate cause of the injury." And in the same case, reported in 71 Iowa, 41, the Court said: "It is next insisted that the verdict is unsupported by the evidence. This claim is based upon the position that the injury to plaintiff resulted from his arm or hand being caught in the latch of the lever, when he reversed it quickly in order to stop the train after it had left the track, and not from his arm or elbow coming in contact with the side or end of the cab, when making the movement as claimed by plaintiff in his testimony. We need not enquire which of these theories is correct. There was evidence to support plaintiff's theory, and the jury may well have found it to be correct. But if it be assumed that defendant's theory as to the cause of the injury be correct, the direct cause was defendant's negligence in failing to keep the track in proper condition, which caused the engine to leave the rails, and required plaintiff to reverse the lever in order to arrest the movement of the engine. If this was done in the ex-

ercise of due care, and injury resulted, the proximate cause was defendant's negligence which demanded the reversal of the lever in the manner in which it was done by plaintiff."

The plaintiff was justified in relying upon the promise of the defendant to replace the defective cable with a new one, and should not be held to have anticipated that defendant would not replace such cable. Neither should he be held to have anticipated that the foreman, Akina, would be absent; or, that he would have to leave the hold of the ship where he was working and go to replace the cable. In the case of *Helpenstein v. Medart*, 136 Mo. 595, the Court, at page 614, said: "It is true that he assumed [815] all risks that were reasonably incidental to the character of his work, but he did not assume risks which might occur by reason of the negligence of his employer, and which he could not have been expected to anticipate." In *Dickson v. Omaha, etc., Ry. Co.*, 124 Mo. 140, the plaintiff's intestate, an engineer, was running his train at a rate of speed that violated a rule of the defendant, and while doing so the engine collided with a bull, the engine was derailed, and the engineer was killed; the bull had strayed upon the track through a defective fence; a statute required the defendant to fence its track. The Court held that the failure of the defendant to keep the fence in repair was the proximate cause of the injury, and not the rate of speed at which the plaintiff's intestate was running his train. This authority recognizes another rule which is well established to the effect that although the servant may have been negligent and

thereby contributed to his injury; or, the injury may have been caused in part by the negligence of a fellow servant, yet, if the master had been negligent in keeping his premises, or appliances which he furnishes the servant to carry on his business, in a suitable and safe condition, he is responsible in damages for injuries received by the servant resulting from his negligence, notwithstanding the negligence of the servant, or fellow servant, unless the negligence of the servant, or fellow servant, was the proximate, or a proximate, cause of the injury. To the same effect, and sustaining the same principle, see the following authorities: *Eureka, etc., Co. v. Wells*, 29 Ind. App. 1, 6; *Hogue v. Sligo Furnace Co.*, 62 Mo. App. 491; *Cole v. Warren Manfg. Co.*, 63 N. J. L. 626; *Paulmier, etc., v. Erie R. R. Co.*, 34 N. J. L. 151; *Benson v. Lumber Co. (Wash.)* 129 Pac. 403; *Missouri, etc., Ry. Co. v. Jones (Tex. Civ. App.)*, 80 S. W. 852; *Smithwick v. Hall, etc.*, 59 Conn. 261; *Coogan v. Aeolian Co.*, 87 Conn. 149; *Central Ry. Co. v. Mitchell*, 63 Ga. 173; [816] *Reed v. Railway Co.*, 72 Iowa, 166; *Fickett v. Lisbon Falls Fibre Co.*, 91 Me. 268; *Ford v. Fitchburg Ry. Co.*, 110 Mass. 240; *McDonald v. Mich. Cent. R. Co.*, 108 Mich. 7; *Flynn v. Kansas City, etc., Ry. Co.*, 78 Mo. 195; *Stone v. Boscawen Mills*, 71 N. H. 288; *Lindsay v. Norfolk & So. R. Co.*, 132 N. C. 59; *Orr v. Southern Bell Tel. & Tel'g. Co.*, 132 N. C. 691. In *Smithwick v. Hall, supra*, the plaintiff, while helping to store ice for the defendant, stood at a point on a raised platform where it was narrow and not protected by a guard-rail, and slippery with fragments of ice, contrary to

a warning by the foreman that the particular place was dangerous; and while at such place was injured by a brick wall, negligently constructed by the defendant, falling on him. The Court held that he was entitled to substantial damages, saying, at page 269: "Nor was his conduct, legally considered, a cause of the injury. It was a condition rather. If he had not changed his position (from a former one) he might not have been hurt. And so, too, if he had never been born, or had remained at home on the day of the injury, it would not have happened; yet no one would claim that his birth or his not remaining at home that day can in any just or legal sense be deemed a cause of the injury." "In cases where the defendant fails to perform its duty in furnishing safe and suitable appliances, the plaintiff will not be held to have assumed the risk in undertaking to perform a dangerous work, unless the act itself is obviously so dangerous that in its careful performance the inherent probabilities of injury are greater than those of safety." *Orr v. South. Bell. Tel. & Tel'g. Co.*, *supra*, page 694, and authorities there cited. The master assumes the duty of exercising reasonable care and prudence to provide the servant with reasonably safe machinery, appliances and tools to exercise the employment, and to maintain them in a reasonably safe condition. (*Davis v. Railroad Co.*, 55 Vt, 84; *Union Pac. Ry. Co. v. O'Brien*, 161 U. S. 451.) [817]

Additional authorities other than those cited in the former opinion in this case (ante page 72) upon the proposition that the question of the proximate

cause of the injury to plaintiff was a question for the jury are abundant. In *Vinton v. Schwab*, 32 Vt. 612, the Court said, at page 614: "But where there is no conflict in the testimony in regard to the particular facts, that will not always make it a mere question of law which the Court may determine. If it still rests upon discretion, experience and judgment, it is a matter of fact and not of law merely. A man in any situation or business is always bound to conform to the rules and usages which prudent and careful men have established in the conduct of similar business under similar circumstances. And it is negligence to make any important departure from such a course, when it proves more injurious to others than the usual course." And, again, it has been said: "What is negligence is a question of law when the facts are undisputed. But where the facts are controverted, or more than one inference can be drawn from them, it is the province of the jury to pass upon an issue involving it. (*Deans v. Railroad*, 107 N. C. 686.) A mixed question is then presented, and it becomes the duty of the judge, at the request of counsel, to tell the jury how to apply the law of negligence to the various phases of the testimony, and the office of the jury to make the application of the law, as given by the Court, to the facts as found by them." (*Tillett v. Railroad*, 118 N. C. 1031.) If negligence may be inferred from a proven circumstance, the inference should be made by the jury, and not the Court. (*Cole v. Warren Manf'g. Co.*, *supra*. Any conflict in the evidence touching the

safety and suitableness of the appliance furnished by the master to the servant with which to conduct the business of the master, makes the question one for the jury whose verdict will not be disturbed. (*Swift & Co. v. Holoubek*, 60 Neb. 784.) But ordinarily the question of negligence is one of intermingled law [818] and fact, and is for the determination of the jury. The law does not—as it cannot—prescribe a general measure of carefulness, except that which varies with the circumstances of each particular case, viz., what would prudent persons ordinarily do under like circumstances. (*Kelly v. St. Paul, etc., Ry. Co.*, 29 Minn. 1.) “Where there are doubtful and qualifying circumstances, the question of negligence or want of proper care is a matter of ordinary observation and experience of the conduct of men, and as such, must be left to the jury, as being within their legal province. The law has said, in these cases, that the plaintiff shall have the judgment of twelve men, and not the opinion of one man.” (*Bonnell v. Del. Lack. & West. R. R. Co.*, 39 N. J. L. 189, 192.) And to the same effect are the following decisions: *Railroad Co. v. Stout*, 17 Wall. 657; *Gaynor v. Old Colony R. W. Co.*, 100 Mass. 208; *Salter v. Utica R. R. Co.*, 88 N. Y. 43; *French v. Taunton Branch R. R. Co.*, 116 Mass. 537; and the *Baltimore, etc., R. Co. v. Walborn*, 127 Ind. 142, where it is said: “Where the facts are undisputed, and where but one inference can be drawn from the undisputed facts, the question of negligence is one of law; but where more than one inference may be reasonably drawn from the facts, the question is one of fact for the jury,

under proper instructions from the Court." See *Gardner v. Michigan Cent. Ry. Co.*, 150 U. S. 349, and authorities therein cited on page 361. Many other citations along the same lines can be made, but we deem it unnecessary to make them.

It is contended on behalf of the defendant that the plaintiff was guilty of contributory negligence in that he failed to raise the weight taking up the slack of the cable, so as to make it safer and easier to replace the cable upon the pulleys. Upon this phase of the case there were conflicting evidence and theories, that of the plaintiff being that it was not necessary as there were two or three inches of slack at the place where the cable had slipped off the pulleys, all that was necessary; and that lifting the weight would not give any more slack at the place where the [819] cable was to be replaced on the pulleys unless the cable was drawn by hand from the point where the weight was installed, to the point where the cable was to be replaced on the pulleys. The theory of the defendant being that lifting the weight would have given sufficient slack at the point where the pulleys were to be replaced to make it safe to replace them, and that if the weight had been lifted the injury would have been avoided. This feature of the case covering the question whether or not the plaintiff was guilty of contributory negligence which caused his injury was submitted fairly to the jury, by the Court, under proper instructions, and the finding of the jury was against the contention of the defendant, and the verdict, so far as the question of contributory negligence on the part of the plaintiff

is concerned, should not be disturbed. On this point the jury were instructed as follows: "In determining the issue of plaintiff's contributory negligence, you may look to all the surrounding facts and circumstances in evidence before you, and determine therefrom whether or not the plaintiff used such care as a person of ordinary prudence would have used under the same or similar circumstances. If you believe from the evidence that he was using ordinary care and prudence during the attempt to replace the cable at the time of the accident, then, I instruct you that the plaintiff was not guilty of contributory negligence. The law does not oblige a servant to pursue a method which is absolutely safe. All that is required of him is that he shall exercise ordinary care and prudence so that he will save himself from injury, and although you may find that the lifting of the weight, or box, might have been the safest course for the plaintiff to pursue, yet, if you find from the evidence that the plaintiff at the time of the accident was exercising ordinary care during his attempt to replace the cable, then he cannot be said to be guilty of contributory negligence that would bar recovery. In [820] other words, the negligence of the plaintiff, in order to bar recovery, must be such as to directly contribute to his injuries; and without which the accident would not have happened; and it is for you to determine from the evidence whether or not the plaintiff was exercising ordinary care and prudence under all the surrounding circumstances." This particular instruction was excepted to by the defendant, and the giving of it is one of the errors

assigned here, but we think there was no error in giving it. At the request of the defendant, the Court gave the following instruction, more favorable to the defendant, we think, than it was entitled to, to wit: "To warrant a recovery in this case it must appear that the injury was due solely to the want of ordinary care on the part of the employer—the defendant, and unless you so find your verdict should be for the defendant. If you find that the injury was due to the want of such care on the part of the employer combined with want of ordinary care on the part of the plaintiff, then both are at fault, and one cannot recover from the other. Where both parties are negligent, there can be no recovery by either." As we have heretofore shown, the plaintiff is not precluded from recovering on the ground that he has been negligent, unless his negligence was the proximate cause, or a proximate cause, of his injury. Later, at the request of the defendant, the Court gave, after making an immaterial modification, the following instruction: "The law places upon all persons the duty of exercising reasonable care to avoid injury, and even though the jury should believe, from the evidence, that the defendant was negligent, and that the plaintiff was injured thereby, if the evidence also shows that the injury would have been avoided by the exercise of ordinary care by the plaintiff, and that the plaintiff did not exercise such care, you should find for the defendant."

It is also contended that much earnestness on behalf of the defendant that the injury to the plaintiff was the result of [821] an efficient intervening

cause between the alleged negligence of the defendant in failing to replace the defective cable with a suitable one, and such injury, viz., the act of the plaintiff in attempting to replace the cable on the pulleys, for which reason the defendant is not liable. Under the instructions quoted, and a number of other instructions given by the Court, the jury were fully instructed as to the duties of the defendant, as master, and of the plaintiff, as servant. The jury were also fully instructed as to such contributory negligence on the part of the plaintiff as would prevent him from recovering, and the charge of the Court, as a whole, was as favorable to the defendant as the law will justify, if not more so. Under the evidence, and the instructions, the jury were authorized to find the following facts: That the worn and burred condition of the cable caused it to come off the pulleys; that it had a short time before, on two different occasions, come off the pulleys from the same cause; that the defendant's attention was called to the defective condition of the cable, and it promised the plaintiff to replace the cable with a new one; that if it had done so, the injury to plaintiff would not have occurred; that a reasonable and prudent man under the circumstances would have anticipated that the cable would come off the pulleys, and under the circumstances, the plaintiff would attempt to replace it, and that the injury to plaintiff was probable, or liable to happen, owing to the height of the conveyor above ground; that defendant's failure to replace the defective cable with a suitable one was an act of negligence, and the proximate cause of the injury; that the hazard of re-

placing the cable was an extraordinary one made necessary by the defendant's negligence, and the attempt to replace the cable made by plaintiff was not a predominating cause of the injury, but related and connected to defendant's act of negligence, and made necessary thereby; that the plaintiff [822] was not negligent, and acted as an ordinarily careful and prudent man would have acted under the circumstances.

Defendant (plaintiff in error) contends that the defective cable only gave occasion to the act of plaintiff in attempting to replace it on the pulleys. This is true, in that it became necessary to replace the cable. Now, this occasion was an incident to the condition of the cable and grew out of it. The attempt to replace the cable was another incident, and if considered as an intervening act or cause, it is obvious that it grew out of, and related to, and made necessary by, the defective condition of the cable; and was not a separate, distinct, unrelated, or disconnected intervening cause, such as will relieve the master from liability. Many authorities might be cited upon this point, but we will cite only a few of them. "Here, as in other cases, where an injury is the result of several causes combining or concurring to produce it, the master will be liable if he is responsible for any one of such causes. Here, as in other relations, the direct or proximate consequences of a wrongful act are those which occur without any intervening cause; and, where an efficient adequate cause has been found, it must be considered as the true cause unless another, not incident to it, but independent of it, is shown to

have intervened. The test is, to consider where the injury would have happened to the servant but for the negligence of the master with regard to the concurrent act or omission of the third person. Thus, where a servant was injured because of a defective appliance which the master should have repaired, the latter was not relieved from liability because a proximate cause of the accident was the act of a third person, if it would not have occurred but for the failure to repair." (Com. on the Law of Neg., Thompson, Vol. IV, Sec. 3857.) "Negligence and wrongful conduct having been established, the general rule is, that the defendant is liable for the natural and proximate damages resulting therefrom—such consequences [823] as might probably ensue in the natural and ordinary course of events. Though the defendant is not responsible for any events produced by independent intervening circumstances, which have no connection with the primary act; if the intervening agencies are put in operation by the wrongful act of the defendant, the injuries directly produced by such agencies are proximate consequences of the primary cause, though they may not have been contemplated or foreseen. The relation of cause and effect between the tortious act and the intervening agencies being shown, the same relation between the primary wrong and the subsequent injuries is also established; the first wrongful act operating through a succession of circumstances, each connected with, and originated by the next preceding." (East Tenn., Va. & Ga. R. R. Co. v. Lockhart, 79 Ala. 315.) These authorities are in point here, and with other authorities herein

cited, and those cited in the former opinion in this case (*ante*, page 73), establish the liability of the defendant for the injury sustained by plaintiff, and the verdict is sustained under the evidence, and under the instructions given by the trial Court.

One of the assignments of error is to the refusal of the trial court to give defendant's request for instruction No. 19, which was in the following words: "The jury is instructed that while a plaintiff is, by law, allowed to testify in his own behalf, yet the jury have the right, in weighing his testimony and determining how much credence is to be given it, to take into consideration the fact that he is the plaintiff and directly interested in the result of the suit." This instruction was properly refused. It referred to and made prominent one feature of the evidence, that is, the interest of the plaintiff in the result of the suit. The Court had theretofore given a very proper instruction which applied to plaintiff, as a witness, the same as other witnesses, to the effect, that, in weighing the evidence of witnesses, they should take into consideration "their interest or [824] lack of interest, if any, in the result of the suit."

One of the errors assigned by defendant is that the verdict for \$13,000 is excessive and unreasonable. This was also one of the grounds of the motion for a new trial, which the trial Court overruled. The evidence shows that prior to the injury plaintiff was a healthy, strong, robust man, with unimpaired vision and hearing, of the age of forty years, and earning six dollars per day; that his expectancy

of life was 27.61 years; that he suffered a basic fracture of the skull, concussion of the brain, a central dislocation of the hip, a distortion of the spine, an impairment of vision and hearing, and that his earning capacity was considerably diminished; and, from the time of the injury to the trial he suffered, continually, great physical pain. As to the measure of damages, among other instructions, the Court gave the following: "If the jury finds from the evidence that the plaintiff is entitled to recover, as alleged in his complaint, in estimating the plaintiff's damages you may take into consideration his physical condition prior to the injury, and also his physical condition since the injury, if you believe from the evidence that his physical condition since the accident has been impaired as a result of such injury; you may further take into consideration in estimating the damages, if you find that he is entitled to any damages, whether or not he has been deprived, by reason of the negligence of the defendant, of the ability to earn money, and if so, to what extent; and you may also consider whether or not he has been permanently injured, and if so, to what extent; you may also consider his mental and physical pain and suffering, past, present, or future, if any, occasioned by his injuries, and in your dispassionate judgment allow him such sum as will fairly compensate him in so far as the evidence may here show you he is entitled to damages in these respects." The giving of this instruction is not [825] challenged by defendant's assignments of error, and under it, and the evidence, we are not justified in holding that the

amount of the verdict, while large, was the result of passion or prejudice, or that it awarded to the plaintiff other than compensatory damages; hence, we do not hold that the damages awarded are excessive. Fixing the amount of damages in a case of this kind is a matter within the discretion of the jury (Sec. 2378 R. L. 1915) whose verdict will not be interfered with by the Court, unless it is so excessive and outrageous, when considered with reference to the circumstances of the case, as to demonstrate that the jury have acted against the rules of law, or have suffered their passions or prejudices to mislead them. (13 Cyc. pp. 121, 124 and authorities cited in notes.)

We have carefully examined the record with reference to all of the errors assigned which were not abandoned, and find no reversible error, either in the admission or rejection of evidence, nor in the instructions, and are of the opinion that the judgment should be affirmed, with costs to plaintiff (defendant in error), and it is so ordered.

Affirmed.

A. G. M. ROBERTSON.

RALPH P. QUARLES.

E. W. SUTTON and W. L. STANLEY (SMITH, WARREN, HEMENWAY & SUTTON and HOLMES, STANLEY & OLSON on the brief), for Plaintiff in Error.

E. A. DOUTHITT (DOUTHITT & COKE on the brief), for Defendant in Error. [826]

[Concurring Opinion of Watson J., of Supreme Court, Territory of Hawaii.]

Concurring opinion of WATSON, J.

I concur in the conclusion arrived at by the majority that the judgment should be affirmed with costs to plaintiff (defendant in error).

Touching the question of the proximate cause of plaintiff's injury and the propriety of the trial Court's action in submitting this issue to the jury, whatever my views might be upon this question as an original proposition, I am of the opinion that the decision of this Court on the former writ of error (*ante*, p. 66), where the same question was considered and decided, became the law of the case and is not now open for re-examination. On the former hearing the position of this Court on the question of proximate cause is expressed in the syllabus as follows:

"The defendant having negligently continued the use of a defective cable on its coal-conveyor which, by reason of its defective condition, came off certain pulleys designed to hold it in position, and the plaintiff, an employee of the defendant on the conveyor, in attempting to restore the cable to its proper position was injured. The question, whether the proximate cause of the plaintiff's injury was the negligence of the defendant in failing to furnish a reasonably safe cable for use, is not a question of science or legal knowledge, but a question of fact for determination by a jury."

From this it appears that the Court expressly held that the plaintiff's evidence bearing on the question of proximate cause (which evidence was substantially the same on the second trial) was sufficient to carry the case to the jury, and in my opinion it must now be held that the conclusion arrived at then must be the law in this case. What was there decided is not now open for discussion and must be held to be *res adjudicata*. In my opinion this question involved the only substantial defense relied on by the defendant, and unless the court has committed error in the instructions or has admitted or rejected evidence which was prejudicial to the defendant's case the judgment will have to be affirmed. [827]

Counsel for plaintiff in error strongly urge that the former ruling of this Court on the question of proximate cause may and should be re-examined on this second writ of error, and, conceding that the view contended for by them is that adopted by the minority of the state courts, cite the case of Hastings v. Foxworthy, 45 Neb. 676, 34 L. R. A. 321, decided by the Supreme Court of Nebraska in 1895, as holding that an Appellate Court on a second appeal may and should examine and reverse its rulings made on the first appeal when the opinion first expressed is manifestly incorrect. I am of the opinion that the Foxworthy case is of little value as an authority in considering the case at bar. In that case (34 L. R. A. 335) the Court distinctly states:

"So far as any express decision or actual consideration of the question concerned, it has never arisen in this case, and following the de-

cision in * * * the question must be solved in favor of the contention of the city. unless by *implication* it has formerly been otherwise resolved in this case, and unless, further, the Court is bound by such *implied* decision so far as this case is concerned."

Again, on page 336, it is said: "The Court may be said to have already three times *impliedly* decided the question now before us * * * *although on no occasion was that question, in fact, considered or actually decided.*"

In the case at bar the question sought to be re-examined has been considered and expressly decided. If not expressly overruled, the doctrine laid down in the Foxworthy case seems to have been abandoned or repudiated by the Supreme Court of Nebraska. In the case of Smith v. Neufeld, 61 Neb. 699, decided by the Supreme Court of Nebraska in 1901, the court, in discussing the doctrine of law of the case, on page 701, says:

"Following an almost unbroken line of authorities in other jurisdictions this Court in a number of early cases held that when a question in controversy has been once squarely decided, the decision, if acquiesced in, or if not recalled, becomes the law of the case and is binding upon the parties and those claiming through or under them in all subsequent stages of litigation. This doctrine was, it is true, challenged as harsh and unjust in *City of Hastings v. Foxworthy*, 45 Neb. 676, but it has been reiterated and reaffirmed in many cases since decided and may

now be regarded as firmly established in the jurisprudence of this state." [828]

On all of the other questions involved in this second writ of error and discussed in the foregoing opinion I concur with the majority in their reasoning and conclusions.

E. M. WATSON. [829]

Filed March 24, 1915, at 2:20 P. M.

In the Supreme Court of the Territory of Hawaii.
October Term, 1914.

GEORGE E. WARD,

Plaintiff and Defendant in Error,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Hawaiian Corporation,
Defendant and Plaintiff in Error,

**Judgment [of Supreme Court, Territory of Hawaii,
Filed April 7, 1915].**

ERROR TO CIRCUIT COURT, FIRST CIRCUIT.

This cause coming on for hearing in this court, and the Court having considered the same and heard the argument of the respective counsel, and having heretofore, to wit, on March 24, 1915, rendered a written opinion herein,

IT IS ORDERED, ADJUDGED AND DECREED, That, pursuant to said written opinion, the judgment of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, entered on the 29th day of June, 1914, is affirmed.

Dated, Honolulu, T. H., April 7th, A. D. 1915.

By the Court:

[Seal]

J. A. THOMPSON,
Clerk Supreme Court.

Approved:

E. M. WATSON.

Filed April 7, 1915, at 10:20 A. M. [831]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COM-

PANY, an Hawaiian Corporation,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Petition for Writ of Error and Supersedeas.

The above-named defendant, INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian corporation, deeming itself aggrieved by the judgment of the Honorable, the Supreme Court of the Territory of Hawaii entered in a cause entitled George E. Ward, Plaintiff, vs. Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, defendant, on or about the 7th day of April, 1915, comes now by Smith, Warren, Hemenway, & Sutton, and Holmes, Stanley & Olson, its attorneys, and hereby humbly petitions said Supreme Court of the Territory of Hawaii for an order allowing said Inter-Island Steam Navigation Company, Limited, to prosecute a writ of error and have the same allowed and issued from the United States Circuit Court of Appeals for the Ninth Circuit to

said Supreme Court of the Territory of Hawaii under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and documentary exhibits upon which said judgment was made duly authenticated, and also the physical exhibits may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and also that an order may be made by this Honorable Court fixing the amount of the bond which the said defendant shall give and furnish upon said writ of error, and that upon the filing of such bond all proceedings in said cause in the Supreme Court of [832] the Territory of Hawaii and in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii be suspended and stayed until the determination of such writ of error by the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit.

And in this behalf your petitioner shows that said judgment was rendered in an action at law and that the amount involved, exclusive of costs, exceeds the value of \$5,000, and amounts to to wit, the sum of \$13,000, and in addition thereto costs taxed amounting to the sum of \$97 and upwards.

SMITH, WARREN, HEMENWAY & SUTTON,

HOLMES, STANLEY & OLSON,

Attorneys for Petitioner.

Dated, Honolulu, T. H., April 12th, 1915.

Territory of Hawaii,
City and County of Honolulu,—ss.

E. W. Sutton, being duly sworn, deposes and says that he is one of the attorneys for the above petitioner; that he has read the foregoing petition and knows its contents, and that the matters and things therein set forth are true of his own knowledge; and further that the amount involved in said cause, exclusive of costs, exceeds the value of \$5,000 and amounts to the sum of \$13,000, and in addition thereto costs taxed in the sum of \$97.00 and upwards.

E. W. SUTTON.

Subscribed and sworn to before me this 13th day of April, 1915.

[Seal]

J. A. THOMPSON,
Clerk Supreme Court, Territory of Hawaii. [833]
Filed April 13, 1915, at 10:45 A. M. [834]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Assignments of Error.

And now comes the INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian corporation, the defendant and plaintiff in

error in the above-entitled cause, by Smith, Warren, Hemenway & Sutton, and Holmes, Stanley & Olson, its attorneys, and says that in the record and proceedings in the above-entitled cause in the Supreme Court of the Territory of Hawaii, there is manifest error to the prejudice of said defendant and plaintiff in error in this to wit:

(1) That the Supreme Court of the Territory of Hawaii erred in its judgment in affirming the judgment of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii for the reason that said judgment was and is contrary to the evidence and the law;

(2) That the Supreme Court of the Territory of Hawaii erred in affirming the action of the Honorable William J. Robinson, Third Judge of said Circuit Court, in denying the motion of the defendant in said action, plaintiff in error, for a judgment of nonsuit for the reason that the plaintiff in said action failed to show that the defendant was guilty of negligence as charged or at all; that the proximate cause of the injury to the plaintiff [835] was his own act; that the evidence showed the plaintiff to be guilty of negligence which not only contributed to the accident but without which the same could not have occurred, and for the reason that the evidence shows that the plaintiff assumed all risks of the employment which resulted in the accident;

(3) That the Supreme Court of the Territory of Hawaii erred in affirming the action of said Circuit Court in refusing to instruct the jury in said cause to render a verdict for the defendant, plaintiff

herein, as requested by said defendant, said requested instruction being as follows:

I instruct you gentlemen of the jury that there is no evidence tending to prove that the negligence of the defendant if any, was the proximate cause of the injuries sustained by the plaintiff, and that your verdict must be for the defendant.

(4) That said Supreme Court of the Territory of Hawaii erred in affirming the action of the jury in said Circuit Court before whom said cause was tried in rendering their verdict in favor of the plaintiff and against the defendant in the sum of \$13,000, for the reason that there was no evidence tending to prove that the negligence of the defendant, if any, was the proximate cause of the injuries sustained by the plaintiff, and that said verdict should have been for the defendant;

(5.) That the Supreme Court of the Territory of Hawaii erred in affirming the action of such Circuit Court in denying the motion of the plaintiff in error for a new trial, for the reason that said verdict of said jury was and is contrary to the law and the evidence and the weight of the evidence;

(6) That the Supreme Court of the Territory of Hawaii erred in affirming the action of said Circuit Court in giving, rendering, entering and filing judgment in favor of plaintiff and against the defendant in the sum of \$13,000, together with costs [836] taxed in the sum of \$97.20 for the reason that the plaintiff in said action failed to show that the defendant was guilty of negligence as charged or at all; that the proximate cause of the injury to the

plaintiff was his own act; that the evidence showed the plaintiff to be guilty of negligence which not only contributed to the accident but without which the same could not have occurred, and for the reason that the evidence shows that the plaintiff assumed all risks of the employment which resulted in the accident.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LTD.,

By Its Attorneys

SMITH, WARREN, HEMENWAY & SUT-
TON,

HOLMES, STANLEY & OLSON,

Dated, Honolulu, this 12th day of April, 1915.

[837]

Filed April 13, 1915, at 10:45 A. M. [838]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corpora-
tion,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Order Allowing Writ of Error and Supersedeas.

Upon reading and filing the foregoing petition for a writ of error together with an assignment of errors presented therewith, alleged to have occurred in the judgment of this Court and in the proceedings in the

trial of said cause prior thereto, IT IS ORDERED that a writ of error be and the same is hereby allowed to the said Inter-Island Steam Navigation Company, Limited, to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered in the above-entitled cause and the proceedings in the trial of said cause prior thereto, and that the amount of the bond to be filed in this court by said Inter-Island Steam Navigation Company, Ltd., in connection with the writ of error prayed for, be and the same is hereby fixed in the sum of \$16,000.00; and IT IS FURTHER ORDERED that upon the filing of an approved bond in said amount all further proceedings in said Supreme Court of the Territory of Hawaii and in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii in said cause shall be suspended and stayed until the determination of such writ of error by the United [839] States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu this 13th day of April, 1915.

[Seal]

E. M. WATSON,

Associate Justice of the Supreme Court of the Territory of Hawaii, Acting in the Absence of the Chief Justice. [840]

Filed April 13, 1915, at 10:45 A. M. [841]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant, Plaintiff in Error,

vs.
GEORGE E. WARD,

Plaintiff, Defendant in Error.

Supersedeas and Cost Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:

That we, Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, as principal, and J. M. Dowsett and C. H. Cooke, both of the City and County of Honolulu, Territory of Hawaii, as sureties, are jointly and severally held and firmly bound unto George E. Ward in the full and just sum of \$16,000.00, to the payment whereof well and truly to be made we hereby bind ourselves and the heirs, executors, administrators, successors and assigns of said sureties, respectively, firmly by these presents.

WITNESS our hands and seals this 12th day of April, 1915.

The condition of this obligation is as follows:

Whereas in the above-entitled cause a petition has been filed for the allowance of a writ of error to have the judgment of said Supreme Court of the Territory of Hawaii rendered in the above-entitled cause on or about the 7th day of April, 1915, and the proceedings in said cause prior thereto reviewed by the United States Circuit Court of Appeals for the Ninth

Circuit and to have issued a supersedeas herein:
[842]

NOW, THEREFORE, if such writ of error and supersedeas shall issue according to the prayer of the petition in that behalf and if the said Inter-Island Steam Navigation Company, Limited, the above bounden principal, shall prosecute said writ of error to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation shall be void,—otherwise the same shall be and remain in full force and virtue.

INTER-ISLAND STEAM NAVIGATION
CO., LTD.,

By JAS. L. McLEAN,
Its Vice-President.

By N. E. GEDGE, (Seal)
Its Treasurer.

J. M. DOWSETT.
C. H. COOKE.

Territory of Hawaii,
City and County of Honolulu,—ss:

J. M. Dowsett and C. H. Cooke, being first duly sworn, depose and say each for himself that he is a resident of Honolulu, Hawaii, and is worth double the amount of the penalty in the foregoing bond in property located in said Honolulu, and not exempt from execution over and above all his debts and liabilities.

J. M. DOWSETT.
C. H. COOKE.

Subscribed and sworn to before me this 12th day of April, 1915.

[Seal]

E. W. SUTTON,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Approved as to form and sufficiency.

J. T. DE BOLT,

Attorney for the Plaintiff.

The foregoing bond is approved as to form and sufficiency this 13th day of April, 1915.

[Seal]

E. M. WATSON,
Associate Justice, Supreme Court of the Territory of Hawaii, Acting in the Absence of the Chief Justice. [843]

Filed April 13, 1915, at 10:45 A. M. [844]

Writ of Error [Copy].

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable the Justices of the Supreme Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the Territory of Hawaii, before you, or some of you, between GEORGE E. WARD, plaintiff (defendant in error), and INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian corporation, defendant (plaintiff in error), a manifest error hath happened, to the great damage of the said Inter-Island Steam Navigation Company, Limited, as is said and appears

by the complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said Court in the City of San Francisco, State of California, together with this writ, so that you have the same at the said place, before the Justices aforesaid on the 12th day of May next, that the record and proceedings aforesaid being inspected, the said Justices of the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice [845] of the Supreme Court of the United States, this 13th day of April, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Fortieth.

[Seal] J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii.

The foregoing writ is hereby allowed.

[Seal]

E. M. WATSON,

Associate Justice of the Supreme Court of the Territory of Hawaii Acting in the Absence of the Chief Justice.

Filed April 13, 1915, at 10:45 A. M. [846]

[Citation on Writ of Error (Copy).]

UNITED STATES OF AMERICA,—ss.

To George E. Ward, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Territory of Hawaii, wherein Inter-Island Steam Navigation Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 13th day of April, 1915.

[Seal]

E. M. WATSON,

Associate Justice of the Supreme Court of the Territory of Hawaii, Acting in the Absence of the Chief Justice.

Due and personal service of the above citation and

806 *Inter-Island Steam Nav. Co., Ltd.,*

receipt of a true copy hereof is hereby admitted this
13th day of April, A. D. 1915.

J. T. DE BOLT,

Attorney for George E. Ward.

Filed and issued for service this 13th day of April,
1915, at 10:45 A. M. [847]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corpora-
tion, Defendant,

Plaintiff in Error,

vs.

GEORGE E. WARD, Plaintiff,

Defendant in Error.

**Order Extending Time for Preparation and
Transmission of Record.**

Upon the application of counsel for plaintiff in error, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit, it is hereby ordered that the plaintiff in error and the clerk of this court be and they are hereby allowed until and including the 30th day of June, 1915, within which time to prepare and transmit to the clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on assignment of errors in this court, together with said assignment of errors and all other papers required as part of said record.

Dated Honolulu, Territory of Hawaii, May 5th, 1915.

[Seal] E. M. WATSON,
Associate Justice, Supreme Court, Territory of Ha-
waii, Acting in the Absence of the Chief Justice.

Approved:

J. T. DE BOLT,
Atty. for Deft. in Error.

Filed May 5, 1915, at 3:20 P. M. [848]

In the Supreme Court of the Territory of Hawaii.
INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corpora-
tion,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Amended Praecept for Transcript.

To James A. Thompson, Esquire, Clerk of the Su-
preme Court of the Territory of Hawaii.

You will please prepare a transcript of the record in this cause (said cause being entitled in the Supreme Court of the Territory of Hawaii: "George E. Ward, Plaintiff and Defendant in Error, vs. Inter-Island Steam Navigation Company, Limited, Defendant and Plaintiff in Error") to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the Writ of Error heretofore issued by said Court, and include in said transcript the following pleadings, proceed-

ings, opinions, judgments and papers on file in said cause, to wit:—

1. Petition for writ of error to First Circuit Court, Territory of Hawaii.
2. Assignment of errors.
3. Notice of issuance of writ of error.
4. Summons and return of service.
5. Bond on writ of error. [849]
6. Writ of error.
7. Appearance and answer to writ of error.
8. Copy of bill of complaint.
9. Copy of term summons with return of service.
10. Copy of answer of defendant.
11. Copy of plaintiff's demand for trial by jury.
12. Copy of plaintiff's motion to amend complaint, and notice.
13. Copy of opinion of Supreme Court dated March 14, 1914.
14. Copy of judgment of Supreme Court dated March 25, 1914.
15. Copy of defendant's requested instruction No. 1A.
16. Copy of verdict of jury, dated June 19, 1914.
17. Copy of judgment of Circuit Court, dated June 29, 1914.
18. Copy of defendant's motion for a new trial.
19. Copy of transcript of evidence on second trial.
20. Copy of opinion of Supreme Court.
21. Copy of judgment of Supreme Court.
22. Copy of appearance of J. T. De Bolt as attorney for plaintiff.
23. Copy of petition for writ of error.

24. Copy of assignment of errors.
25. Copy of citation on writ of error and return of service.
26. Copy of bond on writ of error.
27. Copy of writ of error.
28. Copy of appearance and answer to writ of error.
29. Copy of order extending time for preparation and transmission of record.
30. Copy of amended praecipe for transcript.

And in addition you will please transmit with the foregoing all of the following exhibits: [850]

Plaintiff's Exhibit "A," being a model of the coal-conveyor.

Defendant's Exhibit 1, being blue-print of the coal-conveyor.

Defendant's Exhibit 5, being a pulley worn by cable.

Defendant's Exhibit 7, being a dolly worn by cable.

You will also annex to and transmit with the record, the original Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit and Citation with return of service, your return to the Writ of Error under the seal of the Supreme Court of the Territory of Hawaii, and also your certificate under seal stating in detail the cost of the record and by whom the same was paid.

Honolulu, May 20, 1915.

Respectfully,

W. O. SMITH,

L. J. WARREN,

C. R. HEMENWAY,

E. W. SUTTON,

SMITH, WARREN, HEMENWAY & SUTTON,

By E. W. SUTTON.

HENRY HOLMES,

W. L. STANLEY,

C. H. OLSON,

HOLMES, STANLEY & OLSON,

By W. L. STANLEY. [851]

Filed May 20, 1915, at 3:10 P. M. [852]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,

Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Order for the Transmission of Original Exhibits.

To James A. Thompson, Esquire, Clerk of the Supreme Court of the Territory of Hawaii.

You are hereby authorized and directed in connection with the writ of error from the United States Circuit Court of Appeal for the Ninth Circuit in the above-entitled suit, to transmit as part of the record required by the praecipe of the plaintiff in error, the

following exhibits upon its counsel undertaking to return them to the files of this Court:

Plaintiff's Exhibit "A," being a model of the coal-conveyor.

Defendant's Exhibit 1, being blue-print of the coal-conveyor.

Defendant's Exhibit 5, being a pulley worn by cable.

Defendant's Exhibit 7, being a dolly worn by cable.

Dated, Honolulu, T. H., May 20, 1915.

[Seal]

A. G. M. ROBERTSON,

Chief Justice of the Supreme Court of the Territory of Hawaii. [853]

Filed May 20, 1915, at 3:10 P. M. [854]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, an Hawaiian Corporation,
Defendant, Plaintiff in Error,

vs.

GEORGE E. WARD,

Plaintiff, Defendant in Error.

Undertaking to Return Original Exhibits.

To James A. Thompson, Esquire, Clerk of the Supreme Court of the Territory of Hawaii:

We hereby undertake to return to the files of the Supreme Court of the Territory of Hawaii the following original exhibits sent to the United States Circuit Court of Appeal for the Ninth Circuit in accordance with the order of the Chief Justice of the Supreme Court of the Territory of Hawaii:

Plaintiff's Exhibit "A," being a model of the coal-conveyor.

Defendant's Exhibit 1, being blue-print of the coal-conveyor.

Defendant's Exhibit 5, being a pulley worn by cable.

Defendant's Exhibit 7, being a dolly worn by cable.

SMITH, WARREN, HEMENWAY &
SUTTON,

By E. W. SUTTON,
HOLMES, STANLEY & OLSON,

By W. L. STANLEY,
Attorneys for Plaintiff in Error.

Dated, Honolulu, T. H., May 20, 1915. [855]

Filed May 20, 1915, at 3:10 P. M. [856]

Writ of Error [Original].

UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to
the Honorable the Justices of the Supreme
[Seal] Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the Territory of Hawaii, before you, or some of you, between George E. Ward, plaintiff (defendant in error), and Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, defendant (plaintiff in error), a manifest error hath happened, to the great damage of the said Inter-Island Steam Navigation Company, Limited, as is said and appears by the complaint: We, being willing that such error, if any hath been,

should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said court in the City of San Francisco, State of California, together with this writ so that you have the same at the said place, before the Justices aforesaid on the 12th day of May next, that the record and proceedings aforesaid being inspected, the said Justices of the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice [857] of the Supreme Court of the United States, this 13th day of April, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Fortieth.

[Seal] J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii.

The foregoing writ is hereby allowed.

E. M. WATSON,
Associate Justice of the Supreme Court of the Territory of Hawaii, Acting in the Absence of the
Chief Justice. [858]

Filed April 13, 1915, at 10:45 A. M. [859]

Citation on Writ of Error [Original].**UNITED STATES OF AMERICA,—ss.****To George E. Ward, Greeting:**

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Inter-Island Steam Navigation Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 13th day of April, 1915.

[Seal]

E. M. WATSON,

Associate Justice of the Supreme Court of the Territory of Hawaii, Acting in the Absence of the Chief Justice.

Due and personal service of the above citation and receipt of a true copy hereof is hereby admitted this 13th day of April, A. D. 1915.

J. T. DE BOLT,**Attorney for George E. Ward. [860]**

Filed and Issued for Service this 13th day of April, 1915, at 10:45 A. M. [861]

In the Supreme Court of the Territory of Hawaii.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Defendant,

Plaintiff in Error,

vs.

GEORGE E. WARD, Plaintiff,

Defendant in Error.

**Order Extending Time for Preparation and
Transmission of Record.**

Upon the application of counsel for plaintiff in error, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit, it is hereby ordered that the plaintiff in error and the clerk of this court be and they are hereby allowed until and including the 30th day of June, 1915, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on assignments of errors in this court, together with said assignment of errors and all other papers required as part of said record.

whereof is hereto attached, pages being 849 to 852, both inclusive, DO HEREBY transmit to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 848, both inclusive, and pages 855 to 856, both inclusive, and I certify the same to be full, true and correct copies of the pleadings, record, entries and final judgment which are on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii in the case entitled in said Court "George E. Ward, Plaintiff and Defendant in Error, vs. Inter-Island Steam Navigation Company, Limited, an Hawaiian Corporation, Defendant and Plaintiff in Error," and numbered 736 and 817;

I do further certify that the Original Citation with Acknowledgment of Service thereof, being pages 860 to 861, both inclusive, and the [864] Original Order Extending Time for Preparation and Transmission of Record, being pages 862 to 863, both inclusive, of the foregoing transcript of record are hereto attached and herewith returned.

I further certify that pursuant to an order herein filed, a copy whereof is hereto attached, being pages 853 to 854, both inclusive, I have concluded and do transmit herewith as part of the record in the foregoing entitled cause, the following original exhibits, viz.:

- (1) Plaintiff's Exhibit "A," being a model of the coal-conveyor,
- (2) Defendant's Exhibit 1, being blue-print of the coal-conveyor,

- (3) Defendant's Exhibit 5, being a pulley worn by cable, and
- (4) Defendant's Exhibit 7, being a dolly worn by cable.

I lastly certify that the cost of the foregoing transcript of record is \$296.20, and that said amount has been paid by Messrs. Smith, Warren, Hemenway & Sutton, the attorneys for the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 17th day of June, A. D. 1915.

[Seal]

JAMES A. THOMPSON,

Clerk Supreme Court of the Territory of Hawaii.

[865]

[Endorsed]: No. 2617. United States Circuit Court of Appeals for the Ninth Circuit. Inter-Island Steam Navigation Company, Limited, an Hawaiian Corporation, Plaintiff in Error, vs. George E. Ward, Defendant in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed June 24, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record.
Filed Aug. 12, 1915. F. D. Monckton, Clerk.

No. 2617

United States
Circuit Court of Appeals
For the Ninth Circuit.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, an Hawaiian Corporation,
Plaintiff in Error,

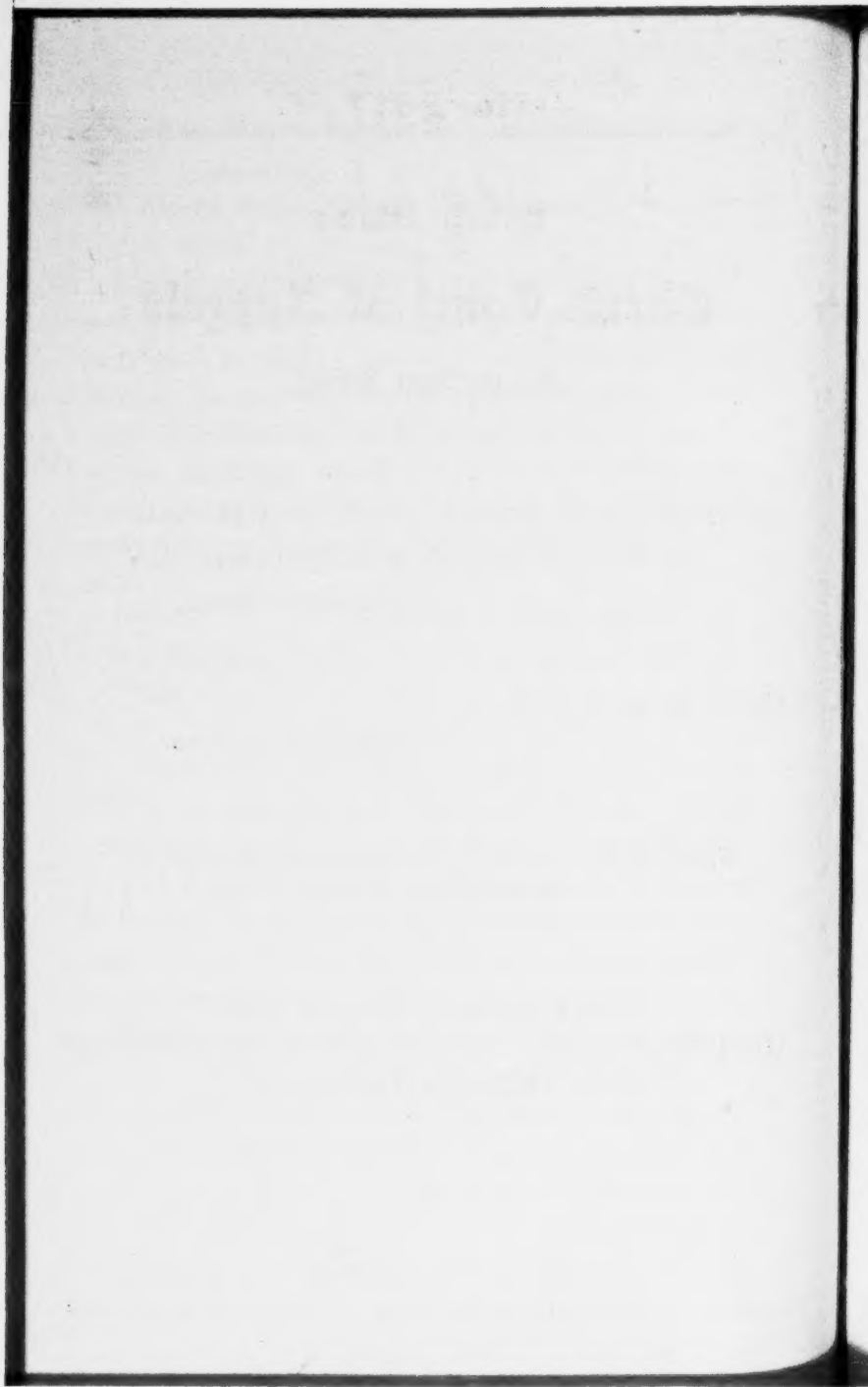
vs.

GEORGE E. WARD,

Defendant in Error.

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.



At a stated term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the twenty-second day of October, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge Presiding; Honorable FRANK H. RUDKIN, District Judge.

No. 2617.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Order of Submission.

ORDERED, above-entitled cause argued by Mr. Edwin White Sutton, counsel for the plaintiff in error, and by Mr. E. S. Douthitt, counsel for the defendant in error, and submitted to the Honorable William B. Gilbert and William W. Morrow, Circuit Judges, and the Honorable Frank H. Rudkin, District Judge, for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifteenth day of May, in the year of our Lord one thousand nine hundred and sixteen. Present The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF A JUDGMENT AND DECREE.

By direction of the Honorable William B. Gilbert, and William W. Morrow, Circuit Judges, and Honorable Frank H. Rudkin, District Judge, before whom the causes were heard, ORDERED that the typewritten opinions this day rendered by this Court in the following entitled causes be forthwith filed by the clerk, and that a Judgment and Decree be respectively filed and recorded in the Minutes of this Court, in accordance with said opinions.

* * * Inter-Island Steam Navigation Company, Limited, a Corporation, Plaintiff in Error, vs. George E. Ward, Defendant in Error, No. 2617.

*In the United States Circuit Court of Appeals for
the Ninth Circuit*

No. 2617.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Hawaiian Corporation,
Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Opinion, U. S. Circuit Court of Appeals.

UPON WRIT OF ERROR TO THE SUPREME
COURT OF THE TERRITORY OF HAWAII,
UNDER SECTION 246 OF THE JUDICIAL
CODE, AS AMENDED BY THE ACT OF
JANUARY 15, 1915 (38 Stat. 803).

Action at law by plaintiff (defendant in error)
for damages on account of injuries sustained as a
result of alleged negligence on the part of defendant
(plaintiff in error, and hereinafter referred to as
defendant company).

On March 10, 1913, George E. Ward filed his
complaint in the Circuit Court of the first Judicial
Circuit of the Territory of Hawaii, to recover dam-
ages in the sum of \$50,000.00 for injuries sustained
while employed by the defendant company in the
capacity of machinist and engineer, and foreman
of the latter's coal-conveyer upon which his injuries
were sustained. The complaint alleged that on ac-
count of the frayed and worn-out condition of the

cable used in drawing the coal cars between the wharf and the company's coal-yard on shore, it had a tendency to slip and become detached from the pulleys holding the same in position; that by reason of the unsafe, dangerous and worn-out condition of the cable, and by reason of the negligence and carelessness of the defendant company, its agents, servants and employees in allowing and permitting the same to remain, continue and be in use and operation, the cable on the 8th day of July, 1912, became detached and slipped from the pulleys holding the same in position; that while plaintiff was endeavoring to restore the cable to its proper position around the pulleys, and without any fault or negligence on his part, the cable, notwithstanding the efforts of plaintiff and others to keep and maintain the same in position, suddenly, and with great force and violence, flew and became entirely detached from the pulleys and struck plaintiff upon his body and hurled and precipitated him to the ground some twenty-five feet below; that defendant company, although well knowing the tendency of the cable to slip and become detached from the pulleys by reason and on account of its dangerous, unfit and worn-out condition, carelessly, negligently and knowingly failed and neglected to provide a suitable or any platform or guard-rail around the tracks so that reasonable protection might be afforded those obliged to work around and near the cable in the event of the cable slipping from the pulleys or rollers; and that by reason of the unsafe, unfit, dangerous and worn-out condition of the cable,

so supplied and furnished by the defendant company, and by reason of the negligence and carelessness of the defendant in failing to provide a suitable or any platform or guard-rail as hereinabove alleged, the plaintiff suffered and still suffers the injuries complained of.

The defendant company having filed a general denial, the action came on for trial before the Circuit Court and a jury. At the conclusion of the plaintiff's case, the defendant company moved for a nonsuit on the ground, among others, that the proximate cause of the injury to plaintiff was his own negligent act, he having attempted to restore the cable to its proper position around the pulleys by prying the same with a crowbar and without first removing the tension from the cable by lifting or removing the weighted box of about 500 pounds weight which hung suspended from the cable, maintaining a high tension throughout its entire length.

The motion for a nonsuit having been granted, the plaintiff sued out a writ of error to the Supreme Court of Hawaii where the judgment of nonsuit was held erroneous, reversed, and the case remanded for a new trial. (22 Hawaiian Reports, 66.)

On the second trial, the defendant company moved as before for a judgment of nonsuit at the conclusion of the plaintiff's case, on the same grounds, which motion was denied on the authority of the decision of the Supreme Court of Hawaii, and the defendant thereupon put on its case. The defendant thereupon requested the Court to instruct the

jury to find in its favor, and this having been denied, the case went to the jury, resulting in a verdict in favor of the plaintiff in the sum of \$13,000.00. The defendant company excepted to the verdict as contrary to the law and the evidence and moved for a new trial, which was denied. Judgment was entered in favor of the plaintiff in the sum of \$13,097.20.

The defendant company thereupon took the case to the Supreme Court of Hawaii by writ of error, the main errors assigned being the denial of its motion for nonsuit, the refusal of the trial court to instruct the jury to find in its favor, the rendering of the verdict, the denial of its motion for a new trial and the entering of judgment against the defendant company and in favor of plaintiff in the sum of \$13,097.20. On March 24, 1915, the Supreme Court of Hawaii rendered its decision holding that no error had been committed. (22 Hawaiian Reports, 488.) From the judgment entered pursuant to this decision, defendant company sued out the writ of error to this Court, under Section 246 of the Judicial Code, as amended by the Act of January 15, 1915 (38 Stat. 803).

W. O. SMITH, L. J. WARREN, E. W. SUTTON,
HENRY HOLMES, and C. H. OLSON, for
Plaintiff in Error.

E. A. DOUTHITT, for Defendant in Error.

Before GILBERT and MORROW, Circuit Judges,
and RUDKIN, District Judge.

MORROW, Circuit Judge, after stating the facts, delivered the opinion of the Court:

There was evidence tending to show that the de-

defendant company was negligent in maintaining a defective cable for the purpose of hauling cars along the coal-conveyer from the ship to the coal-yard. The cable had been in use about ten months at the time of the accident. The evidence tended to show that the life of such a cable was about eight months; that the cable was worn by use to such an extent that the strands of wire on the outside surface had broken and the ends stuck out from a quarter of an inch to an inch; that this defective condition of the cable caused it to rise up on the pulleys and come off; that with these broken strands, it was in a dangerous condition and unfit for the use in which it was being employed; that the unsafe condition of the cable had been brought to the attention of M. E. Gedge, the secretary and treasurer of the defendant company, who was the proper officer to whom such notice should have been given; that this notice was given by the plaintiff and another employee more than a month prior to the date when plaintiff was injured; that on the Saturday previous to the Monday when the plaintiff was injured, the cable came off the pulleys and plaintiff again notified Mr. Gedge of the fact and told him that they would have to have a new cable, and he said all right, a new cable would be put in; that a new cable was on hand and could have been put in on Sunday. Plaintiff testified that he relied upon this promise of Mr. Gedge that a new cable would be put in by Monday.

About seven o'clock in the morning of that day plaintiff returned to his usual work on the wharf

and on board the vessel where he was engaged in superintending the discharge of coal to be carried by the conveyer from the wharf to the coal-yard. Between nine and ten o'clock he was told that the cable was off from the pulleys. The foreman of the conveyer was absent. Plaintiff thereupon went up to the elevated track of the conveyer, the engine was stopped, and, with others, he was proceeding by the use of crowbars to return the cable to its place on the pulleys when he was struck by the cable, knocked from the conveyer structure and, falling about twenty-five feet to the wharf below, received the injuries described in the complaint. There was no platform or guard-rail at or near the pulleys, for the protection of workmen engaged in handling or working on the cable in that part of the conveyer.

This evidence, and the legitimate inferences to be drawn therefrom, the jury had a right to believe; but it is contended on behalf of the defendant that there was no evidence that the negligence here recited was the proximate cause of the injury to the plaintiff; and that the trial court was in error in refusing to so instruct the jury, as requested by the defendant. The argument is, that as the cable was at rest at the time of the accident, the fact that it was off the pulleys created the occasion calling plaintiff to the place where it came off for the purpose of replacing it, but at that point of time and place the effect of defendant's negligence with respect to the defective cable had ceased to operate; that the place, in and of itself, was no longer dangerous; and that it only became dangerous when the independent

or intervening act of the plaintiff came into play, resulting in the accident.

In support of this view, it is contended that the proximate cause of the accident was the failure of the plaintiff to have the tension of the cable relieved by having a weighted box, suspended from the cable at another place in the structure, lifted from the cable so as to give it slack and thus enable the plaintiff to replace it in safety. But there was evidence tending to show that the cable appeared to have sufficient slack to justify the plaintiff in his effort to replace the cable on the pulleys without the delay required to go to another part of the structure and lift the weighted box. The plant was in operation, with its employees at work in the hold of the vessel where buckets were being filled with coal, and by a continuous movement the coal was being hoisted, dumped into cars to be hauled by the cable along the track of the conveyer and dumped into the coal-yard. The method adopted by the plaintiff for restoring the cable to its place on the pulleys was immediate and avoided delay, and had been pursued before; and this was known to Mr. Gedge, who was the responsible official of the defendant company in charge of the work. The inference to be drawn from this situation is that the plaintiff's duties required him to replace the cable on the pulleys with the least possible delay, that the conveyer might be in operation and the employees kept at work discharging coal from the vessel. The situation was one of emergency, calling

for the exercise of ordinary care and prudence on the part of the plaintiff, and, probably influenced by what had been done before, he used the crowbar to replace the cable to its position on the pulleys. The act of the plaintiff and its consequences, considering the unguarded structure, were, therefore, what the defendant might reasonably have anticipated, apprehended, or foreseen.

In *Southern R. R. Co. v. Webb*, 42 S. E. 395, 396, 59 L. R. A. 111, 112, the Supreme Court of Georgia had before it the question whether, after an original wrongful act had spent its force and a new cause had intervened which of itself was sufficient to stand as the cause of misfortune, the former must be considered, as a matter of law, too remote to be submitted to the jury in determining the liability of the original wrongdoer for the injury sustained. The Court reviews the leading cases upon this subject and reaches the conclusion that, if the character of the intervening act, claimed to break the connection between the original wrongful act and the subsequent injury, was such as is probable or natural consequences could reasonably have been anticipated, apprehended, or foreseen by the original wrongdoer, the causal connection is not broken, and the original wrongdoer is responsible for all of the consequences resulting from the intervening act. The Supreme Court held that the jury having solved the question to their own satisfaction, and the trial court having approved their solution, the appellate court had no authority to interfere.

As said by the Supreme Court of the United States in *Milwaukee R. R. Co. v. Kellogg*, 94 U. S. 469, 474, "The true rule is that what is the proximate cause of an injury is ordinarily a question for the jury. It is not a question of science or of legal knowledge. It is to be determined as a fact in view of the circumstances of fact attending it."

We need not multiply authorities upon this question. The attempt to solve it as a question of law has resulted in a multitude of decisions in which the Courts have endeavored to establish a general rule applicable to all cases, but rarely has it been possible to dispose of the question as one of law alone. In the present case, we think the evidence is sufficient to show that the proximate cause was a mixed question of law and fact.

In *Labatt on Master and Servant*, second edition, section 1572 [1st edition, sec. 805], the rule is stated as follows: "Whether the breach of duty established in the given case was the proximate cause of the injury is a mixed question of law and fact. It is, therefore, primarily one for the jury to determine under proper instructions. A Court will not undertake to settle it in any case where it involves the weighing of conflicting evidence, the balancing of probabilities, and the drawing of inferences."

In the opinion of the Supreme Court of the Territory it is stated that "the question of the proximate cause was properly submitted to the jury." The instructions of the Court are not in the record and we are, therefore, not informed as to their

character; but we must assume that the instructions were given with proper reference to the evidence and upon a correct and sufficient statement of the law applicable thereto, if the question was to be submitted to the jury under any possible aspect of the evidence. The jury by their verdict found in effect that the proximate cause of the injury was the negligence of the defendant. This verdict was approved by the trial court upon a motion for a new trial, and by the Supreme Court of the Territory upon a writ of error to that court. In the face of this verdict and the judgments of the trial and appellate courts, we cannot hold, as a matter of law, that reasonable men could not come to the conclusion that the defendant's negligence was the proximate cause of the injury to plaintiff.

It is next contended that the plaintiff assumed the risk attending the work replacing the cable on the pulleys. The rule with respect to this defense has been definitely stated and has been applied by the Supreme Court of the United States in a number of cases. A late case is that of the Seaboard Air Line v. Horton, 233 U. S. 492, 504. Referring to risks which are not naturally incident to the occupation but arise out of the failure of the employer to exercise due care with respect to providing a safe place of work and suitable and safe appliances for the work, the Court says:

"These the employee is not treated as assuming until he becomes aware of the defect or disrepair and of the risk arising from it, unless defect and risk alike are so obvious that an ordinarily prudent per-

son under the circumstances would have observed and appreciated them."

The Court states further elements of the rule, as follows:

"When the employee does know of the defect, and appreciates the risk that is attributable to it, then if he continues in the employment, without objection, or without obtaining from the employer or his representative an assurance that the defect will be remedied, the employee assumes the risk, even though it arise out of the master's breach of duty. If, however, there be a promise of reparation, then during such time as may be reasonably required for its performance or until the particular time specified for its performance, the employee relying upon the promise does not assume the risk unless at least the danger be so imminent that no ordinarily prudent man under the circumstances would rely upon such promise."

This case is authority for the further rule that when these elements are present, the question whether there was an assumption of risk by the plaintiff is a question for the jury under proper instructions.

The evidence shows that the plaintiff complained to the proper official of the defendant company that the cable was defective and unsafe and secured a promise that the defective cable would be replaced by a new one. A new cable was on hand, with which the defective cable might have been replaced during the period between Saturday and Monday when the work of discharging the coal was suspended. This

the defendant neglected to do. The plaintiff returned to his work on the vessel on Monday morning when he had the right to suppose a new cable had been placed in position. When the cable came off a few hours later and he ascended to the top of the conveyer to see what was the matter, he may have learned for the first time that the defective cable had not been replaced by a new one. He was then confronted with an emergency with which he had to deal promptly, in view of all the surrounding circumstances. Whether, under such circumstances, he appreciated the risk attending the replacing of the cable in the way he attempted to replace it, was a question of fact to be determined like any other question of fact.

In *Kane v. Northern Central Railway*, 128 U. S. 91, it was contended that the plaintiff, who was a brakeman on a freight train, was guilty of contributory negligence in staying upon the train in the capacity of a brakeman after observing that a step was missing from one of the cars over which he might pass in discharging his duties, and that he assumed the risk attendant upon such heedless exposure of himself to danger. "But," the Court said, "in determining whether an employee has recklessly exposed himself to peril, or failed to exercise the care for his personal safety that might reasonably be expected, regard must always be had to the exigencies of his position, indeed, to all the circumstances of the particular occasion." In this case the Court held that the circumstances were such that the question involved should be submitted to the jury.

In *Shearman & Redfield on the Law of Negligence*, section 211, the author in discussing the duty of a servant under such circumstances says:

"If every man should cease from work upon the instant of discovering that his safety was imperiled by the negligence of some other person, the business world would come to a stand. If every servant on a railroad or in a factory should refuse to work by the side of a negligent fellow-servant or with defective materials, immediately upon becoming aware of the fact such enterprises could never be carried on, Obviously a reasonable time must be given for removal of the defect; and meantime, the business must be carried on with no prejudice to the servant's rights, unless the risk is so great that no one, acting with ordinary prudence, would go on under the circumstances.

We are of the opinion that the question whether the plaintiff assumed the risk of replacing the cable on the pulleys in the way he attempted to replace it was a question for the jury under proper instructions.

With respect to the question of contributory negligence on the part of plaintiff in failing to raise the weight taking up the slack of the cable, so as to make it safer and easier to replace the cable upon the pulleys, the Supreme Court of the Territory correctly stated the controversy and the evidence upon which it was based, in the following language:

"Upon this phase of the case there were conflicting evidence and theories, that of the plaintiff being that it was not necessary as there were two or three inches

of slack at the place where the cable had slipped off the pulleys, all that was necessary; and that lifting the weight would not give any more slack at the place where the cable was to be replaced on the pulleys unless the cable was drawn by hand from the point where the weight was installed, to the point where the cable was to be replaced on the pulleys. The theory of the defendant being that lifting the weight would have given sufficient slack at the point where the pulleys were to be replaced to make it safe to replace them, and that if the weight had been lifted the injury would have been avoided. This feature of the case covering the question whether or not the plaintiff was guilty of contributory negligence which caused his injury was submitted fairly to the jury, by the Court, under proper instructions, and the finding of the jury was against the contention of the defendant, and the verdict, so far as the question of contributory negligence on the part of the plaintiff is concerned, should not be disturbed."

In *Texas & Pac. Ry. Co. v. Harvey*, 228 U. S. 319, 324, the Supreme Court of the United States said: "It has often been held in this court that ordinary negligence or contributory negligence is not a question of law but of fact, to be settled by the finding of the jury. Where there is uncertainty as to the existence of negligence or contributory negligence, whether such uncertainty arises from a conflict of testimony or because, the facts being disputed, fair-minded men might honestly draw different conclusions therefrom, the question is not one of law."

We concur in the opinion of the Supreme Court of the Territory that the verdict of the jury upon this question should not be disturbed, and upon the whole case we think the judgment of the Supreme Court of the Territory should be affirmed, and it is so ordered.

[Endorsed]: Opinion. Filed May 15, 1916. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 2617.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Corporation,
Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Judgment, U. S. Circuit Court of Appeals.

In error to the Supreme Court of the Territory of Hawaii.

This cause came on to be heard on the Transcript of the Record from the Supreme Court of the Territory of Hawaii, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and hereby is affirmed, with costs in favor of the defendant in error and against the plaintiff in error.

It is further ordered and adjudged by this Court

that the defendant in error recover against the plaintiff in error for his costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered May 15, 1916. F. D. Monekton, Clerk. By Paul P. O'Brien, Depr ty Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Corporation,
Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Order Staying Issuance of Mandate.

On consideration of the application of Messrs. Goodfellow, Eells, Moore & Orrick, acting on behalf of the attorneys for the plaintiff in error in the above-entitled cause, and good cause appearing therefor,—

IT IS ORDERED that the mandate under Rule 32 of this court in said cause be and hereby is stayed to and including the 13th day of July, 1916.

Dated June 12, 1916.

WM. B. GILBERT,
Circuit Judge.

WM. H. HUNT,
United States Circuit Judge.

[Endorsed]: Order Staying Issuance of Mandate.
Filed June 14, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Petition for Writ of Error and Supersedeas.

The above-named plaintiff in error, Inter-Island Steam Navigation Company, Ltd., a corporation, deeming itself aggrieved by the judgment of the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit entered in a cause entitled "Inter-Island Steam Navigation Company, Ltd., a Corporation, Plaintiff in Error, vs. George E. Ward, Defendant in Error," on or about the 15th day of May, 1916, comes now by Messrs. Smith, Warren & Sutton and Messrs. Holmes, Stanley & Olson, its attorneys, and petitions said United States Circuit Court of Appeals for the Ninth Circuit for an order allowing said Inter-Island Steam Navigation Company, Ltd., to prosecute a writ of error, and have the same allowed and issued from the Supreme Court of the United States to said United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and documentary exhibits upon which said judgment was made, duly authenticated,

and also the physical exhibits in said cause, may be sent to said Supreme Court of the United States; and also that an order may be made by this Honorable Court fixing the amount of the bond, which the said plaintiff in error shall give and furnish upon said writ of error, and that, upon the filing of such bond, all proceedings in said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and in the Supreme Court of the Territory of Hawaii, and in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii be suspended and stayed until the determination of such writ of error by the Honorable, the Supreme Court of the United States.

And in this behalf your petitioner shows that said judgment of said United States Circuit Court of Appeals for the Ninth Circuit was rendered in an action at law, and that the amount involved, exclusive of costs, exceeds the value of five thousand dollars, and amounts to, to wit, the sum of thirteen thousand dollars, and, in addition thereto, costs taxed, amounting to ninety-seven dollars and upwards, and interest, and that the judgment of the said United States Circuit Court of Appeals for the Ninth Circuit is not made final by the provisions of the Act of Congress of the United States of America, entitled "An act to codify, revise and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, as amended, and that plaintiff in error is entitled to said writ of error under the provisions of Section 241 of said Act, and Section 246 thereof,

as amended by the Act of said Congress, approved January 28, 1915, entitled "An act to amend an act entitled 'An act to codify, revise and amend the laws relating to the judiciary approved March third, nineteen hundred and eleven.'"

And your petitioner will ever pray.

W. O. SMITH,

L. J. WARREN,

E. W. SUTTON,

HENRY HOLMES,

C. H. OLSON,

SMITH, WARREN & SUTTON, and

HOLMES, STANLEY & OLSON,

Attorneys for Petitioner.

State of California,

City and County of San Francisco,—ss.

W. H. Orrick, being duly sworn, says:

That he is an attorney at law and is authorized by Inter-Island Steam Navigation Company, Ltd., to make, and does make this affidavit on its behalf. That he has read the foregoing petition and knows its contents, and that the matters and things therein set forth are true of his own knowledge, and in particular affiant states that the amount involved in said cause, exclusive of costs, exceeds the value of five thousand dollars, and, in addition thereto, costs taxed at the sum of ninety-seven dollars and upwards, and interest.

W. H. ORRICK.

Subscribed and sworn to before me this 14th day of June, 1916.

[Seal]

MARY L. THOMAS,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires June 20, 1919.

[Endorsed]: Petition for Writ of Error and Supersedeas. Filed June 16, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Assignment of Errors.

Now comes the Inter-Island Steam Navigation Company, Ltd. (a corporation), the plaintiff in error in the above-entitled cause, by Messrs. Smith, Warren & Sutton and Messrs. Holmes, Stanley & Olson, its attorneys, and says that in the record and proceedings in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, there is manifest error to the prejudice of said plaintiff in error, in this, to wit:

1. That the United States Circuit Court of Appeals for the Ninth Circuit erred in its judgment in affirming the judgment of the Supreme Court of the

Territory of Hawaii herein, for the reason that said judgment was and is contrary to the evidence and the law;

2. That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the action of the Supreme Court of the Territory of Hawaii in affirming the action of the Honorable William J. Robinson, Third Judge of the Circuit Court of the First Judicial District of the Territory of Hawaii, in denying the motion of the defendant in said action, to wit, the plaintiff in error herein, for a judgment of nonsuit, for the reason that the plaintiff in said action, to wit, the defendant in error herein, failed to show that said defendant was guilty of negligence as charged, or at all; that the proximate cause of the injury to said plaintiff was his own act; that the evidence showed said plaintiff to be guilty of negligence, which not only contributed to the accident, but without which the same could not have occurred, and for the reason that the evidence shows that said plaintiff assumed all risks of the employment which resulted in the accident referred to in the record herein;

3. That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the action of said Supreme Court of the Territory of Hawaii in affirming the action of said Circuit Court in refusing to instruct the jury in said cause to render a verdict for said defendant as requested by said defendant, said requested instruction being as follows:

"I instruct you, gentlemen of the jury, that there is no evidence tending to prove that the negligence of the defendant, if any was the proximate cause of the injuries sustained by plaintiff, and that your verdict must be for defendant."

4. That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the judgment of said Supreme Court of the Territory of Hawaii in affirming the action of the jury in said Circuit Court before whom said cause was tried in rendering their verdict in favor of said plaintiff and against said defendant in the sum of thirteen thousand (13,000) dollars, for the reason that there is no evidence tending to prove that the negligence of said defendant, if any, was the proximate cause of the injuries sustained by said plaintiff, and that said verdict should have been for defendant.

5. That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the action of the Supreme Court of the Territory of Hawaii in affirming the action of said Circuit Court in denying the motion of said plaintiff in error for a new trial, for the reason that said verdict of said jury was and is contrary to the law and the evidence and the weight of evidence.

6. That the United States Circuit Court of Appeals for the Ninth Circuit erred in holding that the proximate cause of the accident was not the failure of plaintiff to have the tension of the cable referred to in the evidence relieved by having the weighted

box referred to in the evidence lifted from said cable so as to give it slack.

7. That the United States Circuit Court of Appeals for the Ninth Circuit erred in holding that plaintiff did not assume the risks attending the work of replacing the cable on the pulleys.

8. That the United States Circuit Court of Appeals for the Ninth Circuit erred in holding that plaintiff was not guilty of contributory negligence in failing to raise said weighted box and thus relieve the tension on the cable.

9. That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the judgment of the Supreme Court of the Territory of Hawaii in affirming the action of said Circuit Court in giving, rendering and filing judgment in favor of plaintiff and against the defendant in the sum of thirteen thousand (13,000) dollars, together with costs taxed in the sum of ninety-seven and 20/100 (97.20) dollars, for the reason that plaintiff in said action failed to show that the said defendant was guilty of negligence as charged or at all; that the proximate cause of the injury to the said plaintiff was his own act; that the evidence showed said plaintiff to be guilty of negligence, which not only contributed to said accident, but without which the same could not have occurred, and for the reason that the evidence shows that said plaintiff assumed all risks of the employment which resulted in said accident.

WHEREFORE, the said defendant and plaintiff in error prays that the said judgment of said United States Circuit Court of Appeals for the Ninth Cir-

cuit, be reversed, and that the said cause be remanded with instructions to enter judgment for said defendant and plaintiff in error.

W. O. SMITH,
L. J. WARREN,
E. W. SUTTON,
HENRY HOLMES,
C. H. OLSON,

SMITH, WARREN & SUTTON, and
HOLMES, STANLEY & OLSON,

Attorneys for Defendant and Plaintiff in Error.

[Endorsed]: Assignment of Errors. Filed June 16, 1916. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Order Allowing Writ of Error and Supersedeas.

Upon the filing of the petition of the above-named Inter-Island Steam Navigation Company, Ltd., for a writ of error, together with an assignment of errors:

IT IS ORDERED that a writ of error, as prayed for in said petition, be and is hereby allowed to the said Inter-Island Steam Navigation Company, Ltd.,

to have reviewed by the Supreme Court of the United States the judgment heretofore entered in the above-entitled cause, and the proceedings in the trial of said cause prior thereto, and that the amount of the bond to be filed in this court by said Inter-Island Steam Navigation Company, Ltd., in connection with the writ of error prayed for, be and is hereby fixed in the sum of seventeen thousand five hundred (17,500) dollars;

AND IT IS FURTHER ORDERED that, upon the filing of an approved bond in said amount, all further proceedings in said United States Circuit Court of Appeals for the Ninth Circuit in said cause shall be suspended and stayed until the determination of such writ of error by the Supreme Court of the United States.

Dated this 16th day of June, 1916.

WM. B. GILBERT,
Circuit Judge.

[Endorsed]: Order Allowing Writ of Error and Supersedeas. Filed, June 16, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Supersedeas and Cost Bond on Writ of Error.**KNOW ALL MEN BY THESE PRESENTS:**

That we, Inter-Island Steam Navigation Company, Ltd. (a Corporation), as principal, and Fidelity and Deposit Company of Maryland (a Corporation), as surety, are jointly and severally held and firmly bound unto the above-named George E. Ward in the full and just sum of seventeen thousand five hundred (17,500) dollars, to the payment whereof, well and truly to be made, we hereby bind ourselves, and each of us, and each of our successors and assigns, firmly by these presents.

WITNESS our hands and seals this 13th day of June, A. D. 1916.

The condition of this obligation is as follows:

WHEREAS, in the above-entitled cause a petition is about to be filed for the allowance of a writ of error to have the judgment of said United States Circuit Court of Appeals for the Ninth Circuit rendered in the above-entitled cause on or about the 15th day of May, 1916, and the proceedings in said cause prior thereto reviewed by the Supreme Court of the United States and to have issued a supersedeas herein:

NOW, THEREFORE, if such writ of error and supersedeas shall issue, according to the prayer of the petition in that behalf, and if said Inter-Island Steam Navigation Company, Ltd., the above bounden principal, shall prosecute said writ of error to effect, and answer all damages and costs, if it shall fail to

make its plea good, then the above obligation to be null and void; otherwise the same shall be and remain in full force and virtue.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LTD.,

By SMITH, WARREN & SUTTON,

Its Attorneys.

FIDELITY AND DEPOSIT COMPANY,
OF MARYLAND,

By GUY LE ROY STEVICK,

Attorney in Fact.

[Seal]

Attest: EDWIN C. PORTER,

Agent.

The within bond is hereby approved.

WM. B. GILBERT,

Circuit Judge for the Ninth Judicial Circuit.

[Endorsed]: Supersedeas and Cost Bond on Writ
of Error. Filed June 16, 1916. F. D. Monckton,
Clerk.

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

No. 2617.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

**Praeipce for Certified Transcript of Record on
Return to Writ of Error from Supreme Court
U. S.**

To the Clerk of the Said Court:

Sir: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals) and not less than thirty uncertified copies thereof, for use on Writ of Error from the Supreme Court of the United States in the above-entitled cause, the said Transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered Oct. 22, 1915;

3. Order Directing Filing of Opinion, etc., entered May 15, 1916;

4. Opinion, filed May 15, 1916;

5. Judgment, filed and entered May 15, 1916;

6. Order Staying Issuance of Mandate, filed June 14, 1916;

7. The following papers on Writ of Error from said Supreme Court:

Petition for Writ of Error and Supersedeas;
Assignments of Error;

Order Allowing Writ of Error and Supersedeas;

Supersedeas and Cost Bond on Writ of Error;

8. Praecept for Transcript of Record, filed July 19, 1916;

9. Certificate of Clerk, U. S. Circuit Court of Appeals to said Transcript;

10. Original Writ of Error; and

11. Original Citation on Writ of Error.

Please prepare thirty or more uncertified printed copies of said Record by printing 30 or more copies of the above-entitled proceedings that were had and papers that were filed in said cause in said Circuit Court of Appeals, and by binding one of the latter printed copies of said proceedings, etc., at the end of each of 30 or more extra copies of the printed Transcript of Record on which said cause was heard in said Circuit Court of Appeals.

Also please transmit with the certified printed Transcript of the Record on said Writ of Error, all of the original exhibits heretofore placed of record in the cause in said Circuit Court of Appeals, viz.:

Plaintiff's Exhibit "A";

Defendant's Exhibits Nos. 1, 5, and 7.

W. O. SMITH,

L. J. WARREN,

E. W. SUTTON,

SMITH, WARREN & SUTTON,

HENRY HOLMES,

C. H. OLSON,

HOLMES and OLSON,

Attorneys for Plaintiff in Error.

Service of a Copy of the within Praecept is hereby admitted this 6th day of July, 1916.

E. A. DOUTHITT,

Attorney for Defendant in Error.

[Endorsed]: Praeipie for Certified Transcript of Record on Return to Writ of Error from Supreme Court U. S. Filed July 19, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2617.

INTER-ISLAND STEAM NAVIGATION COM-
PANY, LIMITED, a Corporation,
Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

**Certificate of Clerk U. S. Circuit Court of Appeals to
Transcript of Record Upon Return to Writ of
Error from the Supreme Court of the United
States.**

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing eight hundred and fifty-two (852) pages, numbered from and including 1, to and including 852, marked respectively, Volume I, Volume II and Volume III, to be a true copy of the record, and of the assignment of errors, and of all proceedings in the above-entitled case, made up pursuant to the praecipe filed by counsel for the plaintiff in error on the 19th day of July, A. D. 1916, under Rule 8 of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office, and that the same, together with the accompanying original exhibits,

viz: Plaintiff's Exhibit "A" and Defendant's Exhibits Nos. 1, 5 and 7, filed on the 24th day of June, A. D. 1915, constitute the Transcript of Record and return to the writ of error from the Supreme Court of the United States in the above-entitled cause, as made up and certified pursuant to said praecipe.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this twenty-eighth day of July, A. D. 1916.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

[Canceled U. S. Internal Revenue 10-cent Documentary Stamp.]

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said United States Circuit Court of Appeals, for the Ninth Circuit, before you, or some of you, between Inter-Island Steam Navigation Company, Ltd., a corporation, plaintiff in error, and George E. Ward, defendant in error, a manifest error hath happened to the great damage of the said Inter-Island Steam Navigation Company, Ltd., plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within sixty (60) days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 16th day of June, in the year of our Lord one thousand nine hundred and sixteen.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,

*Clerk of the United States Circuit Court of
Appeals for the Ninth Judicial Circuit.*

Allowed by:

WM. B. GILBERT,

*United States Circuit Judge for the
Ninth Judicial Circuit.*

[Endorsed:] Docketed. No. 2617. United States Circuit Court of Appeals for the Ninth Circuit. Inter-Island Steam Navigation Company, Ltd., a Corporation, Plaintiff in Error, vs. George E. Ward, Defendant in Error. Writ of Error. Filed Jun- 16, 1916. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Goodfellow, Eells, Moore & Orrick, Insurance Exchange Building, San Francisco.

Return to Writ of Error.

The answer of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit to the within Writ of Error:

As within we are commanded, we certify under the seal of our said Circuit Court of Appeals, in a certain schedule to this writ annexed,

the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the Supreme Court of the United States, within mentioned, at the day and place within contained.

Dated: San Francisco, California, July 28, 1916.

By the Court:

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
*Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit,*
By PAUL P. O'BRIEN,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to George E. Ward,
Greeting:

You are hereby notified that in a certain cause in the United States Circuit Court of Appeals for the Ninth Circuit, wherein Inter-Island Steam Navigation Company, Ltd., a corporation, is plaintiff in error, and George E. Ward is defendant in error, the said plaintiff in error has prayed a writ of error to the Supreme Court of the United States from the judgment of said United States Circuit Court of Appeals in said cause entered on or about the 15th day of May, 1916, and that said plea has been allowed.

Wherefore, you are hereby cited and admonished to appear in the Supreme Court of the United States to be holden in Washington within sixty (60) days from the date hereof, to show cause why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. William B. Gilbert, Senior United States Circuit Judge for the Ninth Judicial Circuit, this 16th day of June, A. D. 1916.

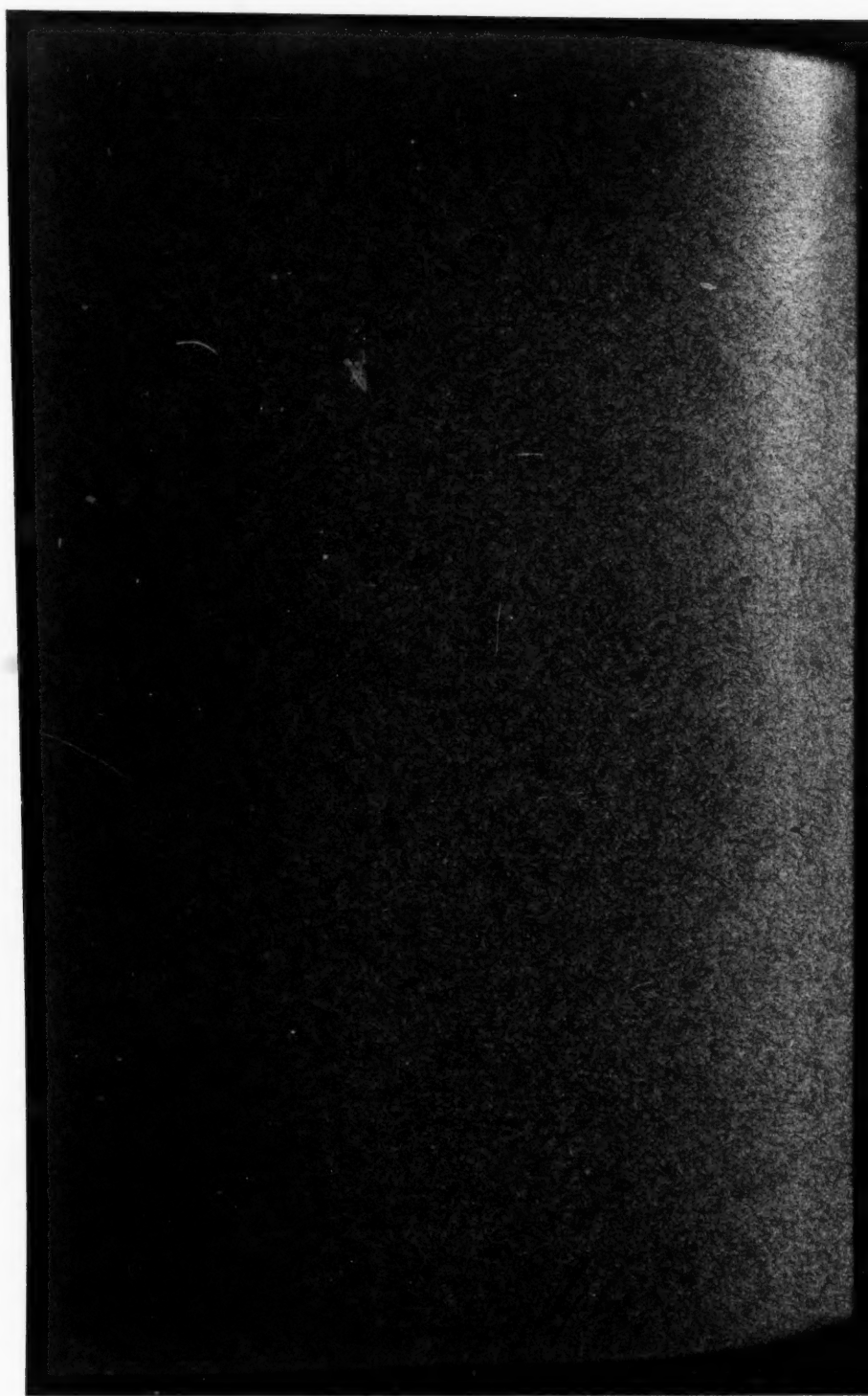
WM. B. GILBERT,
United States Circuit Judge.

Service of a copy of the within Citation is hereby admitted this 6th day of July, A. D. 1916.

E. A. DOUTHITT,
Attorney for Defendant in Error.

[Endorsed:] Docketed. No. 2617. United States Circuit Court of Appeals for the Ninth Circuit. Inter-Island Steam Navigation Company, Ltd., a Corporation, Plaintiff in Error, vs. George E. Ward, Defendant in Error. Citation on Writ of Error. Filed July 19, 1916. F. D. Monckton, Clerk. Goodfellow, Eells, Moore & Orrick, Insurance Exchange Building, San Francisco.

Endorsed on cover: File No. 25,468. U. S. Circuit Court Appeals, 9th Circuit. Term No. 638. Inter-Island Steam Navigation Company, Limited, plaintiff in error, vs. George E. Ward. Filed August 28th, 1916. File No. 25,468.



In the Supreme Court of the United States

OCTOBER, 1916, TERM.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error.

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS

Statement of the Case:

This case comes to this Court by writ of error to the Circuit Court of Appeals for the Ninth Circuit, pursuant to the provisions of the Judicial code of the United States, and particularly § 241 thereof.

The action was originally instituted March 10, 1913, in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, the defendant in error filing a complaint alleging personal injuries sustained by him through the negligence of the plaintiff in error. On the first trial a motion for a non-suit was made by plaintiff in error and granted and the case was thereupon taken on error to the Supreme Court of the Territory of Hawaii, resulting in a reversal of the judgment of non-suit and the ordering of a new trial.

The second trial resulted in a verdict by the jury awarding the defendant in error \$13,000 damages, and the judg-

ment entered on the verdict was carried to the Supreme Court of Hawaii on writ of error, resulting in an affirmance by that court on March 24, 1915. The plaintiff in error thereupon carried the case by writ of error to the Circuit Court of Appeals for the Ninth Circuit, pursuant to the provisions of § 246 of the Judicial Code, as amended by the Act of Congress of January 28, 1915.

On May 15, 1916, the Circuit Court of Appeals affirmed the judgment of the Supreme Court of Hawaii and the case is now brought to this Court by writ of error, as above stated.

The defendant in error has filed herein a motion to dismiss the writ of error on the ground that this Court has no jurisdiction to hear or determine this cause or to review the said judgment of the Circuit Court of Appeals, claiming, first that § 246 of the Judicial Code, as amended by the Act of January 28, 1915, made the judgment of the Circuit Court of Appeals final; and second, that error does not lie from the Supreme Court of the United States to the Circuit Court of Appeals in cases of the character of the one at bar.

ARGUMENT.

UNDER SECTION 241 OF THE JUDICIAL CODE, A WRIT OF ERROR LIES FROM THE SUPREME COURT TO THE CIRCUIT COURT OF APPEALS TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS ON A CASE BROUGHT THERE UNDER THE PROVISIONS OF SECTION 246 OF THE JUDICIAL CODE, AS AMENDED JANUARY 28, 1915.

The Organic Act of the Territory of Hawaii, as originally enacted, made no provision for a review of the final

judgments of the courts of the Territory of Hawaii, except in the same manner and in the same class of cases that the judgments of state courts are reviewable (§ 86 of "An Act to Provide a Government for the Territory of Hawaii," Act of April 30, 1900; 31 Sts. at L. 141, c. 339).

On March 3rd, 1905, five years after the organization of the Territory of Hawaii, Congress provided for writs of error and appeals to the Supreme Court of the United States from the final judgments of the Supreme Court of Hawaii, where the amount involved exceeded \$5000, irrespective of any federal question, (33 Sts. at L. c. 1465, s 3; § 246 of the Judicial Code) the material portion of the section reading as follows:

"Writs of error and appeals from the final judgments and decrees of the Supreme Court of the Territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States, * * * in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars."

(§ 1223 of the United States Compiled Statutes 1913, Judicial Code § 246.)

On January 28, 1915, while the present case was pending a decision by the Supreme Court of Hawaii, Congress amended § 246 of the Judicial Code by striking out the portion just quoted and providing in its stead the following:

"Writs of error and appeals from the final judgments and decrees of the supreme courts of the Territory of Hawaii and of Porto Rico, wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the value of \$5,000, may be taken and prosecuted in the circuit courts of appeals."

(Act of January 28, 1915, 38 Stat. at L. 804, c. 22.)

It will be noted that practically the only change in Section 246 was the substitution of the words "circuit courts of appeals" in the place of "Supreme Court of the United States," and placing Porto Rico in the same class with Hawaii.

Congress having provided by the Act of January 28, 1915, that certain classes of cases might be taken to the Circuit Court of Appeals from the Supreme Court of Hawaii for review, the question as to whether that court is the court of last resort for such cases can be answered only by an examination of the statutes defining and limiting the jurisdiction of the Circuit Court of Appeals and defining the appellate jurisdiction of the Supreme Court of the United States.

The Circuit Court of Appeals, at the time it was given appellate jurisdiction over Hawaiian cases, was not a court of final resort except in certain specified classes of cases. Section 2 of the Judiciary Act of March 3, 1891, c. 517, 26 Sts. 826, which became Section 117 of the Judicial Code (§ 1108 of the U. S. Comp. Stat. 1913) provided that in each circuit there should be a circuit court of appeals, "with appellate jurisdiction as hereinafter limited and established."

Section 6 of the Judiciary Act of 1891 (Section 128 of the Judicial Code, § 1120 U. S. Comp. Stat. 1913) defined precisely the classes of cases over which the Circuit Courts of Appeals should exercise appellate jurisdiction and specified the classes of cases in which the judgments of that Court should be final, viz., (1) In all cases in which the jurisdiction was dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; (2) Also in all cases arising under the patent laws; (3) Under the revenue laws;

(4) Under the criminal laws; (5) in admiralty cases; and by a later amendment, (6) Under the copyright laws.

By this enumeration of the classes of cases in which the judgments and decrees of the Courts of Appeals are *made final* any doubt as to whether the decision of the Circuit Court of Appeals in the present case can be considered as *made final* is at once laid at rest, under familiar rules of construction. Unquestionably therefore, the judgment of the Circuit Court of Appeals now before this Honorable Court for review was *not made final* by any provision in the Judicial Code.

This leaves for consideration the question of whether the Plaintiff in Error in the present case has the *right* to carry the judgment of the Circuit Court of Appeals to the Supreme Court of the United States for review.

The only provision made by the Judicial Code for review by this Honorable Court of the judgments and decrees of the Circuit Courts of Appeals are Sections 239, 240 and 241 of the Judicial Code. These sections were, in substance, originally part of Section 6 of the Judiciary Act of March 3, 1891 (26 Stat. at L. 828). Section 6 of the Judiciary Act contained also the provisions above referred to respecting the appellate jurisdiction of the Circuit Courts of Appeals and the enumeration of cases in which its decisions should be final. This section is set out in full in the brief of Defendant in Error on the motion to dismiss, pages 3, 4 and 5.

Section 241 of the Judicial Code, under which plaintiff in error claims this Court has jurisdiction, reads as follows:

"In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs."

(§ 1218 of the United States Compiled Statutes 1913, Judicial Code § 241.)

In brief, the mode in which cases may be carried to the United States Supreme Court and the classes of cases thus reviewable are as follows: first, the certification of questions by the Circuit Court of Appeals to the Supreme Court for instructions; second, in cases *made final by the provisions of the title* the Supreme Court is given the right to require by certiorari or otherwise that any such case should be certified to it for review and determination; and third, in any case in which the judgment or decree of the Circuit Court of Appeals *is not made final* by the provisions of this title, the losing party is given the right by appeal or writ of error to carry the judgment to the Supreme Court of the United States for review and determination.

From these provisions of the code it is clear that it was the intent of Congress that the Supreme Court should have appellate jurisdiction over all cases brought before the Circuit Court of Appeals—in some instances such right of review being optional with the Supreme Court and in others optional with the party aggrieved by the decision of the Circuit Court of Appeals. It is likewise clear from Section 241 of the Judicial Code that in cases such as the present, where the judgment of the Circuit Court of Appeals is not made final by any provision in the Judicial Code, the party aggrieved has an unqualified right to a review of such judgment by the Supreme Court.

It happens that the present is the first Hawaiian case to be carried from the Circuit Court of Appeals to the Supreme Court, and consequently there is no absolute precedent. However, as above noted, the substance of Section 241 of the Judicial Code has been in force since 1891, and during this period there has been in force a provision by which the Cir-

cuit Courts of Appeals are given appellate jurisdiction over decisions of the Territorial Supreme Courts; Sec. 15 of the Act of March 3, 1891, 26 Stat. at L. 830.

The Supreme Court of the United States has had occasion to consider not only this appellate jurisdiction of the Courts of Appeal over the decisions of Territorial Supreme Courts, but its own appellate jurisdiction over decisions of the Circuit Courts of Appeals in such territorial cases. In the case of *Shute vs. Keyser*, 149 U. S. 649, 37 Law Ed. 884 and in the case of *Aztec Mining Company vs. Ripley*, 151 U. S. 79, 38 Law Ed. 80, these points were covered, and while the decisions may not be of much assistance in determining the question now before the Court, yet the latter case is important in that the phrase "*in all cases not hereinbefore in this section made final* there shall be of right an appeal * * *" was applied as we contend the similar phrase in Section 241 of the Judicial Code should be, the language of the Court being as follows:

"The last paragraph of the section provides that 'In all cases not hereinbefore in this section made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States, when the matter in controversy shall exceed one thousand dollars besides costs'; and as this case was not made final by that section, a writ of error would lie were it not that under Section 15 that Court had no jurisdiction to review the judgment." (The italics are ours.)

In view of the fact that the Circuit Courts of Appeals were by the Judiciary Act of 1891, given appellate jurisdiction over judgments and decrees of the Supreme Courts of the Territories and the Indian Territory (26 Stat. at L. §§ 829, 830), there is no force in the argument that Section 241 of the Judicial Code refers only to cases originat-

ing in the District and Circuit Courts of the United States.

Decisions of the Hawaiian Supreme Court were not reviewable by the Circuit Court of Appeals because Hawaii was not an organized territory at the time of the Judiciary Act, and the provision in the Organic Act of the Territory of Hawaii respecting review of Hawaiian decisions was inconsistent with the view that the Circuit Court of Appeals had appellate jurisdiction over such cases, Section 86 of this Act restricting appeals to cases in which appeals are allowable to the United States courts from the courts of the several states; see *Wilder Steamship Company vs. Hind*, 108 Fed. Rep. 113, *affirmed* 183 U. S. 552.

Consequently, in view of the provision made by Section 241 of the Judicial Code, we respectfully submit that the plaintiff in error has *of right a writ of error* and therefore this Honorable Court has jurisdiction to review the judgment in question.

THE JOURNALS OF CONGRESS DO NOT SHOW THAT IT WAS THE INTENTION OF CONGRESS TO MAKE THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FINAL.

While it is undoubtedly true that one of the primary objects of the Judiciary Act of 1891 was to relieve the Supreme Court of the overburden of cases and controversies and to transfer, in accomplishment of that object, a large part of its appellate jurisdiction to the Circuit Courts of Appeals, yet this intent did not prevent Congress from providing in the Act of March 3, 1891, in the case of territories, not only for appeals and writs of errors in certain specified cases from the decisions of the Circuit Courts of Appeals, but also for direct appeals and writs of error from the Territorial Supreme Courts to the Supreme Court of the United States. This appears clearly from the two cases above re-

ferred to: *Aztec Mining Company vs. Ripley*, and *Shute vs. Keyser*, as well as from an examination of the Statutory provision in question.

THE DISCREPANCY IN JURISDICTIONAL AMOUNTS BETWEEN SECTIONS 241 AND 246 IS NOT SIGNIFICANT, BUT AT MOST EVIDENCE OF HASTE IN THE PASSAGE OF THE ACT OF JANUARY 28, 1915.

While it is true that under Section 246 of the Judicial Code as amended January 28, 1915, \$5000 is the jurisdictional amount for cases to be carried from the Supreme Court of the Territory of Hawaii to the Circuit Court of Appeals, and the jurisdictional amount fixed by Section 241 of the Judicial Code for carrying cases from the Circuit Court of Appeals to the Supreme Court of the United States is only \$1000, yet this fact of itself does not aid the argument that Congress did not intend that Section 241 should apply to cases brought to the Circuit Court of Appeals from the Supreme Court of the Territory of Hawaii. The reason for this disparity in jurisdictional amounts is not difficult to find when reference is made to the debates in Congress resulting in the passage of the Act in its final amended form.

The act of January 28, 1915, (H. R. 19076) in the form it came from the House to the Senate was correctly summarized by the Senate Judiciary Committee in its report, viz.,

"Relieving the Supreme Court of the United States from the necessity of reviewing such cases from the Supreme Courts of Porto Rico and Hawaii as involve no federal question, but depend entirely on the local or general law, etc."

(Congressional Record, Senate, December 21, 1914, page 435.)

Had the bill passed in its original form neither the Circuit Court of Appeals nor this Court would have had jurisdiction over this or any similar Hawaiian case.

When the bill came up for third reading in the Senate, three weeks after the Judiciary Committee's Report above quoted from, certain amendments not material to the present case—namely, relating to placing Porto Rico in a Circuit, making the decisions of the Courts of Appeals in trade mark cases final, etc., were offered by the Judiciary Committee. After these proposed amendments had been debated, Senator Southerland stated that he had that day received protests from the Bar of Hawaii against the provision in the bill which sought to take away from the Supreme Court of the United States appellate jurisdiction over Hawaiian Supreme Court cases involving \$5000 or over. Rather than delay the passage of the bill until the formal opposition of the Bar Association of Hawaii could be received, he suggested a compromise measure and hurriedly writing out his proposed amendment (so hurriedly written that to avoid mistake he himself read it), he proposed as an amendment that the following be added at the end of Section 2 of the bill:

"Writs of error and appeals from the final judgments and decrees of the Supreme Courts of Hawaii and Porto Rico, wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or other competent witnesses, exceeds the value of \$5000 may be taken and prosecuted in the Circuit Court of Appeals."

With no reference back to Committee, no analysis of other related provisions in the code, and with practically

no debate, this amendment was accepted and the bill in its amended form passed its final reading—all within perhaps not more than half an hour (Congressional Record, Senate, January 14, 1915, pp. 1542-1546). The House having concurred in the Senate's amendments, likewise without debate, the bill went to the President, by whom it was approved January 28, 1915.

In view of the haste with which the bill was considered after the amendment in question was offered, it is not strange that the discrepancy in jurisdictional amounts should have occurred. It is evident that the amendment in question was based wholly on the language of Section 246, for except for the transposition of one phrase, the substitution of the Court of Appeals for the Supreme Court and the addition of Porto Rico the wording is the same.

Even admitting that the actual intent of Congress in passing the bill in its final amended form was to relieve this Court of part of its burden, by substituting the Circuit Court of Appeals as the appellate court for Hawaii, it failed to fully accomplish this purpose. Possibly had there been no necessity for haste the amendment proposed by Mr. Southerland would have been referred back to the Judiciary Committee and they undoubtedly would have seen that to relieve this Court entirely from Hawaiian cases it was necessary to add to the amendment some phrase indicative of that intent, such as "*and the decisions of the Circuit Courts of Appeals in such cases shall be final.*"

In its present form the act accomplishes only part of the purpose, for while the decisions of the Circuit Court of Appeals will end many controversies, there doubtless will be cases, such as the present one, where the parties will deem themselves wronged by the decision of the Court of Appeals and seek redress from this Court. To this extent,

therefore, the Act failed to fully accomplish what possibly was the purpose of Congress.

Where the language of a statute is plain and unambiguous and can have but one meaning as in the present instance, the provisions must be given their legal effect even though in so doing possibly the actual but unexpressed purpose of Congress is not carried out.

However, the fact that by section 4 of the Act of January 28, 1915, the decisions of the Circuit Court of Appeals were expressly made final in bankruptcy cases is strong evidence that Congress knew that without such declaration, decisions by the Circuit Court of Appeals, in such cases, would not be final — and therefore, evidence of the intent that decisions of that Court on cases from Hawaii, provided for in the same Act, were not intended to be final.

We respectfully submit that this Court has jurisdiction of the present case and therefore the motion to dismiss should be denied with costs.

Respectfully submitted,

E. W. SUTTON,

Attorney for Plaintiff in Error.

Of Counsel:

WILLIAM O. SMITH,
SMITH, WARREN & SUTTON,
HOLMES & OLSON.

No. 638

FILED
AUG 20 1916

JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

**MOTION TO DISMISS WRIT OF ERROR FOR WANT OF
JURISDICTION AND TO AWARD DAMAGES.**

AFFIDAVIT AND NOTICE

E. A. DOUTHITT,

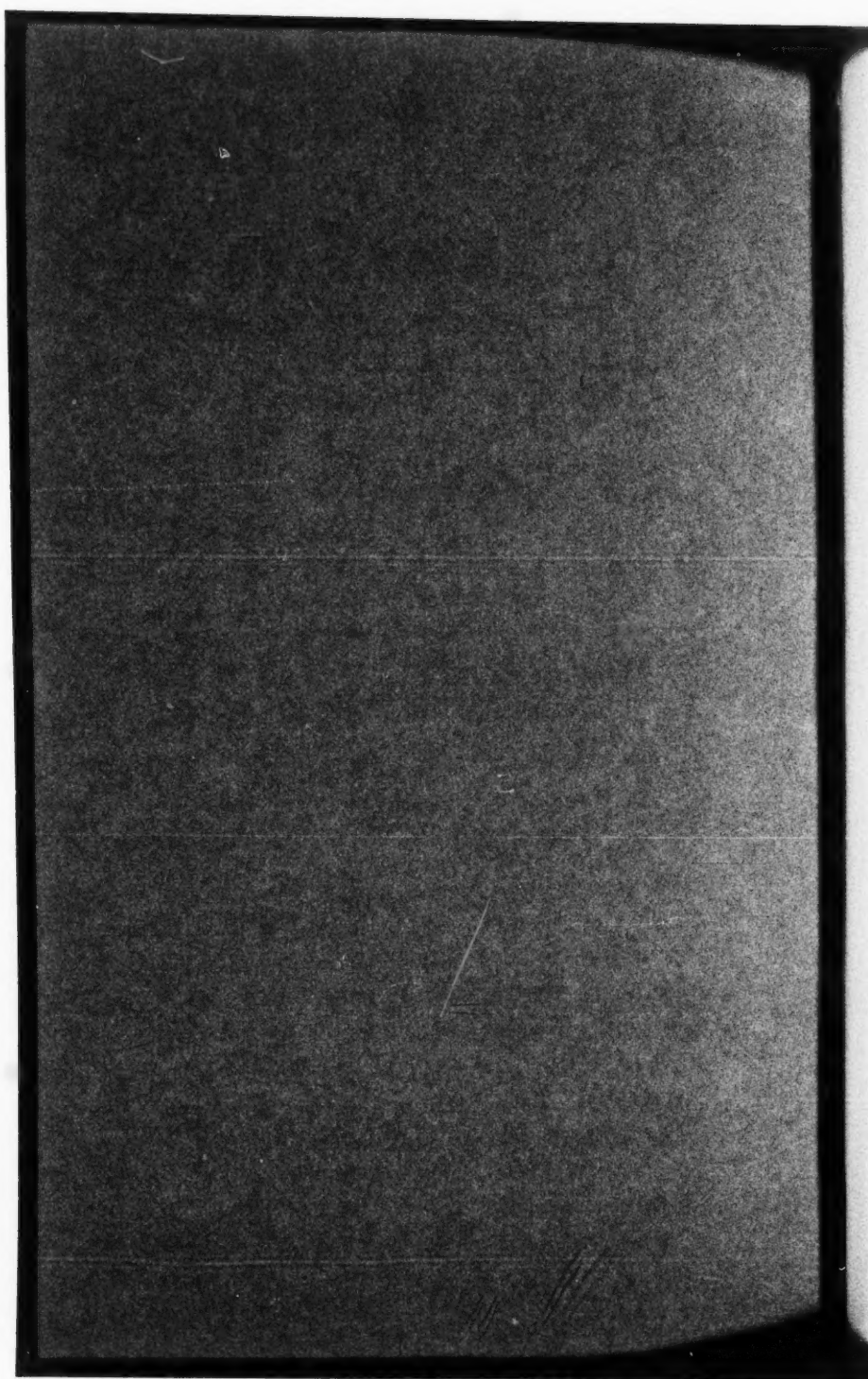
Attorney for Defendant in Error.

Filed this _____ day of _____, 1916.

J. D. MAHER, *Clerk.*

By _____

Deputy Clerk.



In the Supreme Court of the United States

OCTOBER, 1916, TERM.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

MOTION TO DISMISS WRIT OF ERROR FOR WANT OF JURISDICTION AND TO AWARD DAMAGES.

To the Honorable the Chief Justice
and the Associate Justices of the
Supreme Court of the United States:

Now comes the above named defendant in error by
E. A. Douthitt, his attorney, and hereby moves this
Honorable Court to dismiss the writ of error hereto-
fore issued herein, and to award damages, upon the
following grounds, to wit:

First: That pursuant to the Act of Congress of
January 28, 1915, ch. 22, being "An Act to codify,
revise and amend the laws relating to the judiciary,"
approved March 3, 1911, the judgment of the Circuit
Court of Appeals for the Ninth Circuit heretofore
made, rendered and entered herein on the 15th day

of May, A. D. 1916, was and is final in said cause, and error does not lie thereto from this Court.

Second: That this Honorable Court has no jurisdiction to hear or determine this cause or to review the said judgment of said Circuit Court of Appeals, in that there is no federal question involved herein.

Third: That this cause is not one of those embraced within the provisions of Sections 128 and 241 of the Judiciary Act of March 3, 1911, which allow writs of error from this Court to the final judgments of the Circuit Court of Appeals.

Fourth: That damages and interest be awarded defendant in error here, for that the said writ of error was and is prosecuted merely for delay, and by the issuance thereof the proceedings of the inferior court have been and are delayed.

This motion is made on the foregoing grounds and is based upon the record herein, the printed brief filed herewith, and upon the affidavit of E. A. Douthitt hereto attached, and made part hereof.

Dated at Honolulu, Hawaii, this 15th day of August, A. D. 1916.

GEORGE E. WARD,
Defendant in Error.

By E. A. DOUTHITT,
His Attorney.

In the Supreme Court of the United States

OCTOBER, 1916, TERM.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

AFFIDAVIT OF E. A. DOUTHITT

United States of America,

Territory of Hawaii,

City and County of Honolulu.

} ss.

E. A. Douthitt, being first duly sworn, deposes and says: That he is a member of the bar of this Court, and that at all the times herein mentioned was and still is the attorney for the above named defendant in error.

That the following facts are shown in the Congressional Record of the House of Representatives and the Senate of the United States in so far as concerns the amendment of Section 246 of the Judicial Code and contained in the Act of January 28, 1915:

That the said act was originally H. R. 19,076, and when the amendment was proposed to Section 246, the right of error or appeal to this Court as allowed by

said section from the final judgments of the Territory of Hawaii in cases involving more than five thousand dollars was eliminated therefrom as shown by the Congressional Record of the House of date December 16, 1914, at page 282.

The report of the Judiciary Committee of the Senate, at page 435 of the Senate Congressional Record, of date December 21, 1914, states that the object of said amendment was to relieve the Supreme Court of the United States from the necessity of reviewing cases from the Supreme Courts of Porto Rico and Hawaii as involve no federal question and when the amount involved is more than five thousand dollars.

That it appears from pages 1544, 1545 and 1546 of the Congressional Record of the Senate, of date January 14, 1915, that the object and purpose of the amendment to Section 246 of said Code, which provides that "writs of error and appeals from the final judgments and decrees of the Supreme Courts of the Territory of Hawaii and of Porto Rico wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the value of five thousand dollars, may be taken and prosecuted in the Circuit Courts of Appeals," was to relieve this Court of the review and determination of such cases and to transfer the jurisdiction of the same to the Circuit Courts of Appeals, whose judgments therein should be final.

E. A. DOUTHITT.

Subscribed and sworn to before me this 15th day
of August, A. D. 1916.

CLAUS L. ROBERTS, (Seal.)

*Notary Public, First Judicial Circuit,
Territory of Hawaii.*

In the Supreme Court of the United States

OCTOBER, 1916, TERM.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

NOTICE

*To the Above Named Plaintiff in Error,
and to Messrs. Smith, Warren & Sutton,
and Messrs. Holmes & Olson, Its Attorneys:*

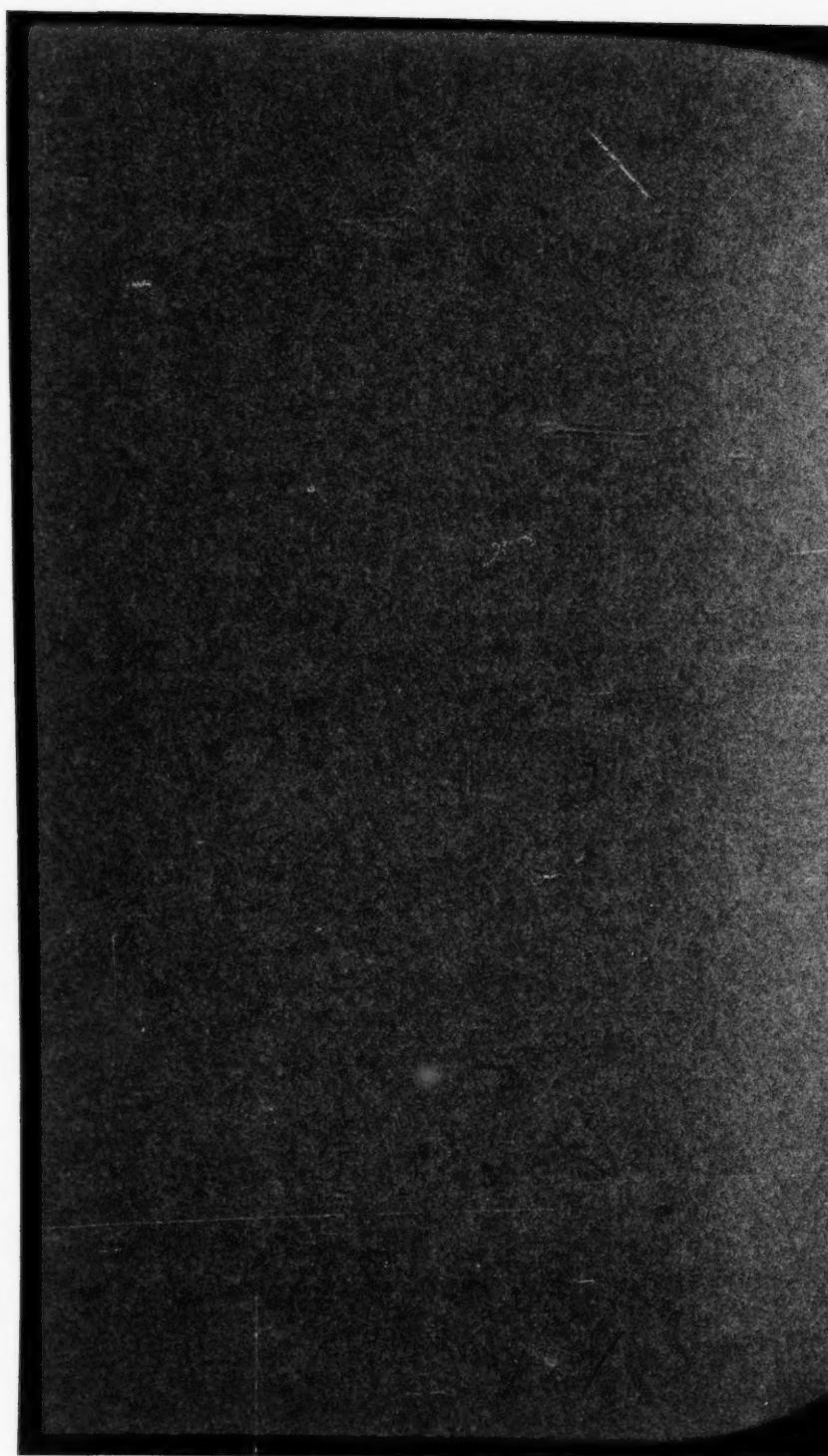
You and each of you will please take notice that the foregoing motion to dismiss the writ of error, etc., herein will be presented to the Honorable the Supreme Court of the United States on the opening day of the term of said Court, to wit: on Monday, the 9th day of October, A. D. 1916, when the said Court convenes on said day, or as soon thereafter as the matter may be heard, at the courtroom of said Court, in the Capitol Building, Washington, D. C.

Yours, etc.,

E. A. DOUTHITT,

Attorney for Defendant in Error.





In the Supreme Court of the United States

OCTOBER, 1916, TERM.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS

Statement of the Case:

This is an action at law for damages for personal injuries sustained by defendant in error, and was originally brought in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, which is a Territorial and not a Federal Court. Upon the first trial, a motion for a non-suit was made, granted, and judgment of non-suit entered. The case was then taken on error to the Supreme Court of the Territory, which resulted in a reversal of the judgment, and a new trial ordered.

The case was again tried before a jury, and on the 19th day of June, 1914, a verdict was rendered in favor of defendant in error, and damages assessed at \$13,000.00.

The case was again taken on error to the Supreme Court of Hawaii by plaintiff in error, and on the 24th day of March, 1915, the Supreme Court of Hawaii affirmed the judgment.

The plaintiff in error thereupon brought the case on error to the Circuit Court of Appeals for the Ninth Circuit, pursuant to the Act of Congress of January 28, 1915, ch. 22, same being "An Act to amend 'An Act to codify, revise and amend the laws relating to the judiciary,' approved March 3, 1911" (Federal Statutes Ann. Supplement 1916, p. 135-136). On the 15th day of May, 1916, the Circuit Court of Appeals unanimously affirmed the final judgment of the Supreme Court of Hawaii, and the case is now brought to this Court on error from the final judgment of said Circuit Court of Appeals.

The defendant in error now moves to dismiss this last writ of error upon the ground that this Court has no jurisdiction, first, in that the Act of January 28, 1915, made the judgment of the Circuit Court of Appeals final; second, that error does not lie from this Court to the Circuit Court of Appeals in cases of the character of the one at bar. *The record discloses no federal question.*

ARGUMENT

Under the provisions of Section 86 of "An Act to provide a Government for the Territory of Hawaii" (Act of April 30, 1900, 31 Sts. at L. 141, c. 339) the relations between the Federal and Territorial Courts were in general similar to those between the Federal

and State Courts; and cases could only be taken to this court by writ of error, where a federal question was involved, and could not be taken to the Circuit Court of Appeals as from other Territories of the United States.

Congress then passed the Act of March 3, 1905, (33 Sts. at L. s. 1465, c. 3) which allowed writs of error and appeals to this Court from the final judgments of the Supreme Court of Hawaii, where the amount involved, exclusive of costs, exceeded the sum or value of five thousand dollars, irrespective of any federal question. This act was incorporated in the Judiciary Act of March 3, 1911, and is found in Section 246 thereof.

Then came the Act of Congress of January 28, 1915, ch. 22, being "An Act to codify, revise and amend the laws relating to the judiciary," approved March 3, 1911, which among other things, transferred the appellate jurisdiction of this Court from the final judgment of the Supreme Court of Hawaii, where the amount involved, exclusive of costs, exceeded the sum or value of five thousand dollars, to the Circuit Court of Appeals for the Ninth Circuit. This is the latest act of Congress relating to appeals and error to this Court from the Courts of Hawaii.

**Section 241 of the Judiciary Act of March 3, 1911,
has no Application to this Case.**

Section 6 of the Act of March 3, 1891, provides as follows:

"That the circuit courts of appeals established

"by this act shall exercise appellate jurisdiction to
 "review by appeal or by writ of error final decisions in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

"And excepting also that in any such case as is hereinbefore made final in the circuit court of ap-

"peals it shall be competent for the Supreme Court
 "to require, by certiorari or otherwise, any such
 "case to be certified to the Supreme Court for its
 "review and determination with the same power
 "and authority in the case as if it had been carried
 "by appeal or writ of error to the Supreme Court.

"In all cases not hereinbefore, in this section,
 "made final there shall be of right an appeal or
 "writ of error or review of the case by the Supreme
 "Court of the United States where the matter in
 "controversy shall exceed one thousand dollars be-
 "sides costs. But no such appeal shall be taken
 "or writ of error sued out unless within one year
 "after the entry of the order, judgment, or decree
 "sought to be reviewed. (26 Stat. L. 828)."

This section, subsequently, was re-enacted by Congress as Sections 128 and 241 of the Judiciary Act of March 3, 1911. It will be seen, therefore, that Section 241 of the Judicial Code was formerly the last paragraph of Section 6 of the Act of March 3, 1891.

Section 128 of the Judicial Code provides for appeals and writs of error from the *District Courts of the United States*, including the United States District Court for Hawaii, to the Circuit Courts of Appeals, excepting only those cases which may be taken direct to this Court, as provided in Section 238 of the Code, and except as provided in Sections 239 and 240, which, respectively provide for the certification of questions to this Court by the Circuit Court of Appeals, and for certiorari by this Court. It is plain, therefore, that

Section 128 refers to federal courts only, and furthermore designates those cases in which the judgment of the Circuit Court of Appeals is final. It is also plain that the section in question *refers only* to cases of a federal character, the jurisdiction of which originates in the District Courts of the United States.

The last clause of Section 6 of the Act of March 3, 1891, reads: "*In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.*" Section 241 of the Judicial Code is substantially the same as the portion of Section 6 above quoted. Manifestly this portion of Section 6 referred only to such other cases of a federal character originating in the *District Courts* of the United States and not made final in the Circuit Court of Appeals. The re-enacted sections of the Judicial Code are to be given the same meaning they had in the original statute, unless a contrary intention is plainly manifested.

United States vs. Le Bris, 121 U. S. 278, (30 L. Ed. 946).

"The primary object of this act, well known as
 "a matter of public history, manifest on the face
 "of the Act, and judicially declared in the leading
 "cases under it, was to relieve the court of the
 "overburden of cases and controversies, arising
 "from the rapid growth of the country, and the
 "steady increase of litigation; and for the accom-

“plishment of this object, to transfer a large part
 “of its appellate jurisdiction to the Circuit Courts
 “of Appeals thereby established in each judicial
 “circuit, and to distribute between this court and
 “those, according to the scheme of the Act, the en-
 “tire appellate jurisdiction from the *Circuit* and
 “*District Courts* of the United States.”

American Construction Co. vs. Jacksonville,
 158 U. S. 372, (37 L. Ed. 490).

“The jurisdiction of this Court depends upon the
 “nature of the case rather than upon the pecuniary
 “amount involved.”

The Paquete Habana, 175 U. S. 677, (44 L.
 Ed. 321).

This Court has also decided that the ground of
 jurisdiction of the lower court is the test of the ap-
 pellate jurisdiction of this Court from the final judg-
 ments of the Circuit Court of Appeals.

Bagley vs. General Fire Ex. Co., 212 U. S.
 477 (53 L. Ed. 605).

In a late case decided by this Court, and construing
 Sections 5 and 6 of the Act of March 3, 1891, it was
 said:

“The line of division is marked in Section 6 of
 “the Act. It is to be observed that the line of divi-
 “sion between cases appealable directly to this
 “Court, and those appealable to the Circuit Court
 “of Appeals, made by Section 5 of the Act, is based
 “upon the nature of the case or of the questions

"of law raised. But the line of division of cases
 "appealable from the Circuit Court of Appeals and
 "those not so appealable drawn by Section 6 is
 "different, and is determined not by the nature of
 "the case or of the questions of law raised, *but*
 "*by the sources of jurisdiction of the trial court,*
 "namely, the circuit or district court,—whether the
 "jurisdiction rests upon the character of the parties
 "or the nature of the case."

Macfadden vs. U. S., 213 U. S. 288, (53 L. Ed. 802).

See also *Huguley vs. Galetton Mills Co.*, 184 U. S. 290, (46 L. Ed. 548).

The title of the Act of March 3, 1891, sheds material light on this question, for it regulates in certain cases the "jurisdiction of the Courts of the United States." It is plain, therefore, that Section 6 of the Act of March 3, 1891, and re-enacted in Sections 128 and 241, of the Judicial Code, refers only to those cases originating in the District Courts of the United States. Any other construction of Section 241 of the Judicial Code would lead to an absurdity, as hereinafter pointed out in this brief.

In the light of the foregoing decisions it appears that Sections 128 and 241 of the Judicial Code contemplate only those cases originating in the District Courts of the United States, and apply only to the Courts of the United States. If this reasoning is sound, then Section 241 has no application to the case at bar. It has been said by this Court that:

"The jurisdiction of the Supreme Court of the United States is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction."

California vs. S. P. Co., 157 U. S. 229, 261, (39 L. Ed. 683, 695).

If Section 241 Allowed a Writ of Error in this Case, it would be Inconsistent with the Later Act of Congress Relating to Appeals and Error from the Courts of Hawaii.

This Court has held that the primary object of Congress in the Act of March 3, 1891, was to relieve this Court of the overburden of cases coming before it, owing to the rapid growth of the country, and to distribute the appellate jurisdiction of cases arising in the District and Circuit Courts of the United States between this Court and the Circuit Court of Appeals.

American Construction Co. vs. Jacksonville (supra).

If Section 241 permitted a writ of error from this Court to the Circuit Court of Appeals, it would cause an anomalous situation to arise. By the provisions of Section 246 of the Judicial Code, as amended by the Act of January 28, 1915, (Federal Sts. Ann. Supplement 1916, p. 136) appeals or writs of error from the final judgments of the Supreme Court of Hawaii may be taken and prosecuted in the Circuit Court of Appeals, where the amount involved, exclusive of costs, exceeds the sum of five thousand dollars. Prior to

this amendment, appeals or writs of error in such cases were taken directly to this Court. If Section 241 applies to this case, then it would first require a jurisdictional amount of five thousand dollars to go to the Circuit Court of Appeals and then only one thousand dollars for an appeal to this Court. This is such an inconsistency as to make the application of Section 241 to this case an absurdity; and especially so in the light of the decisions of this Court as above set forth.

As an additional evidence that Congress intended by the Act of March 3, 1911, to further restrict the right of appeal to this Court, in the cases mentioned in Section 6 of the Act of March 3, 1891, it added cases arising under the "copyright laws" and made the judgment of the Circuit Court of Appeals final therein. (Sec. 128, Judicial Code).

If the intention of Congress was to relieve this Court, as hereinbefore pointed out, then such intention would be of no avail, for Section 241 of the Judicial Code would nullify the same by allowing indirect appeals or writs of error to this Court from the final judgments of the Supreme Court of Hawaii in all cases involving more than five thousand dollars. That such was not the intention of Congress, is manifest by the Act of January 28, 1915, which substituted in such cases the Circuit Court of Appeals in place of this Court.

Congress has fixed the sum of five thousand dollars as the amount necessary to give the Circuit Court of Appeals jurisdiction in cases coming to that court

from the final judgments of the Supreme Court of Hawaii, irrespective of any federal question. On the other hand it has made the judgments of the Circuit Court of Appeals final in certain specified subjects of federal jurisdiction set forth in Section 128 of the Judicial Code, and allows appeals or writs of error to this Court in all other cases where the source of jurisdiction relates solely to cases, federal in their nature, and depending upon either the nature of the suit or subject matter, or the character of the persons involved. In one case, the amount only is important; in the other, either the character of the persons involved or the subject matter of the suit is the controlling element, as to whether or not error lies from this Court to the final judgments of the Circuit Court of Appeals.

As was said by Mr. Chief Justice Marshall, in *Cohens vs. Virginia*, 6 Wheat. 264, 393 (5 L. Ed. 257, 288), when referring to the two classes of federal jurisdiction:

"In one description of cases the jurisdiction of
 "the court is founded entirely on the character of
 "the parties, and the nature of the controversy is
 "not contemplated by the constitution. The char-
 "acter of the parties is everything, the nature of
 "the cases nothing. In the other description of
 "cases the jurisdiction is founded entirely on the
 "character of the case, and the parties are not con-
 "templated by the constitution. In these the na-
 "ture of the case is everything, the character of the
 "parties nothing."

As a logical conclusion then, it follows that Section

241 of the Judicial Code applies only to cases of a federal character and arising in the District Courts of the United States, and not to appeals or writs of error from the final judgments of the Circuit Court of Appeals, in cases taken from the Supreme Court of Hawaii to that court, where there is no federal question involved, and where the source of jurisdiction of the Circuit Court of Appeals depends solely on the amount involved. It was certainly not the intention of Congress to give two appeals from the final judgments of the Supreme Court of Hawaii. The test of the jurisdiction of this Court of cases similar to the one at bar, where no federal question is involved, is whether error would lie directly from this Court to the final judgments of the Supreme Court of Hawaii. If error does not lie, then by allowing error to the Circuit Court of Appeals would permit that to be done indirectly which could not be done directly.

As said by this Court:

"In the exposition of statutes, the established
"rule is to be deduced from a view of the whole
"statute, and every material part of the same; and
"where there are several statutes relating to the
"same subject, they are all to be taken together,
"and one part compared with another in the con-
"struction of any one of the material provisions,
"because in the absence of contradictory or incon-
"sistent provisions, they are supposed to have the
"same object and as pertaining to the same system.
"Resort may be had to every part of a statute, or,
"where there is more than one in *pari materia*, to

“the whole system, for the purpose of collecting
 “the legislative intention, which is the important
 “inquiry in all cases where provisions are ambigu-
 “ous or inconsistent. Rules and maxims of inter-
 “pretation are ordained as aids in discovering the
 “true intent and meaning of any particular enact-
 “ment; but the controlling rule of decision is, that,
 “whenever the intention of the legislature can be
 “discovered from the words employed, in view of
 “the subject matter and the surrounding circum-
 “stances, it ought to prevail, unless it lead to
 “absurd and irrational conclusions, which should
 “never be imputed to the legislature, except when
 “the language employed will admit of no other
 “signification.”

Kohlsaat vs. Murphy, 96 U. S. 153, (24 L.
 Ed. 844).

**The Act of January 28, 1915, Merely Substituted the
 Circuit Court of Appeals as a Court of Final Re-
 view in Place of this Court so as to Relieve it of
 the Overburden of Cases.**

Section 246 of the Judiciary Act of March 3, 1911
 (Act of March 3, 1905, Sec. 1465, c. 3, 33 St. L.
 1035), allowed the prosecution of writs of error and
 appeals from the final judgments of the Supreme Court
 of Hawaii to this Court in the same cases and within
 the time and in the same manner as appeals or writs
 of error could be taken from the final judgments of the
 highest court of a State. It also provided for the prose-
 cution of writs of error and appeal to this Court from

the final judgments of the Supreme Court of Hawaii in all cases wherein the amount involved, exclusive of costs, exceeded the sum or value of five thousand dollars. The last clause of the act in question was an amendment to Section 86 of "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900.

Section 246, as amended by the Act of January 28, 1915, re-enacted the first portion of Section 246, but added writs of error and appeals from the Supreme Court of Porto Rico. The amended act also provides:

" * * * and in *all other cases, civil or criminal*,
 "in the Supreme Court of Hawaii or the Supreme
 "Court of Porto Rico, it shall be competent for
 "the Supreme Court of the United States to re-
 "quire by certiorari, upon the petition of any party
 "thereto, that the case be certified to it, after final
 "judgment or decree, for *review and determination*,
 "with the same power and authority as if taken to
 "that Court by *appeal or writ of error*."

The last sentence of the amended section provides for the taking of appeals and the prosecution of writs of error to the Circuit Court of Appeals from the final judgments of the Supreme Courts of Hawaii and of Porto Rico, wherein the amount involved, exclusive of costs, exceeds the value of five thousand dollars.

It will thus be seen that the Act of January 28, 1915, not only covered the whole subject of the first, but added new provisions, to wit, certiorari by this Court from the final judgments of the Supreme Courts of Hawaii and Porto Rico, *in any case, civil or crim-*

inal, and irrespective of the amount involved, or the character of the subject matter; and in addition thereto transferred the former appellate jurisdiction of this Court in cases involving more than five thousand dollars to the Circuit Court of Appeals. It is manifest that the intention of Congress was to make the Act of January 28, 1915, a substitute for the Act of March 3, 1905, and therefore operated as a repeal of that act.

"The spirit as well as the letter of a statute
 "must be respected; and where the whole context
 "of the law demonstrates a particular intent in the
 "legislature to effect a certain object, some degree
 "of implication may be called in to aid that intent.
 "And it is a well settled rule in the construction of
 "statutes, often affirmed and applied by this Court,
 "that even where two acts are not in express terms
 "repugnant, yet if the latter act covers the whole
 "subject of the first, and embraces new provisions,
 "plainly showing that it was intended as a substi-
 "tute for the first act, it will operate as a repeal of
 "that act."

The Paquete Habana, 175 U. S. 685, (44 L. Ed. 323).

The plaintiff in error could have applied to this Court for a writ of certiorari, pursuant to the Act of January 28, 1915, for Section 246, as amended, gives such right irrespective of amount or question involved; and furthermore gives this Court the same power and authority by certiorari to *review* and determine the final judgments of the Supreme Courts of Hawaii and Porto Rico as if taken to that Court by appeal or writ of error.

It is plain that it was the intention of Congress that the final judgments of the Supreme Courts of Hawaii and Porto Rico could be reviewed in this Court only by certiorari, and the doctrine of *expressio unius est exclusio alterius* applies. By electing to prosecute its writ of error in the Circuit Court of Appeals from the final judgment of the Supreme Court of Hawaii, it waived its right to a review and determination in this Court.

It is elementary that the right to appeal and error are conferred only by statute, which must be strictly complied with. There is nothing contained in the Act of January 28, 1915, which allows error from this Court to the final judgments of the Circuit Court of Appeals in cases of the character of the case at bar. If it had been the intention of Congress to give such right, it would have said so in the act. On the contrary, it is plain that Congress did not so intend, for it specifically provided for a writ of certiorari.

The Journals of Congress Show that it was the Intention to Make the Judgment of the Circuit Court of Appeals Final.

It is an elementary principle in the law of statutory construction, when endeavoring to interpret the true intent of the lawmakers, that resort may be had to the legislative journals of proceedings.

The bill as originally introduced in the House of Representatives (H. R. 19,076) shows that error from this Court to the final judgments of the Supreme Court of Hawaii as allowed by Section 246 of the Judicial

Code was eliminated and certiorari added in such cases. (Congressional Record—House, Dec. 16, 1914, p. 282.)

The Judiciary Committee of the Senate reported favorably on the bill and reported the purpose of the change in Section 246 as follows:

“(2) Relieving the Supreme Court of the United States from the necessity of reviewing such cases “from the Supreme Courts of Porto Rico and Hawaii as involve no federal question, but depend “entirely on the local or general law, etc.”

Congressional Record—Senate, Dec. 21, 1914, p. 435.

On January 14, 1915, the amendment again came before the Senate as reported by its Judiciary Committee (Congressional Record—Senate, Jan. 14, 1915, pp. 1542, 1543) and finally an amendment was proposed to the effect that the Circuit Court of Appeals be substituted for this Court in cases involving more than five thousand dollars, and in such form the section was passed (Congressional Record—Senate, pp. 1544, 1545 and 1546). From a reading of the pages above referred to, it is plain that the primary object of Congress was to relieve this Court of the burden of cases coming before it by substituting the Circuit Court of Appeals as the court of final review in cases similar to the one under consideration. By no reasonable interpretation can it be inferred that Congress intended to give any further or additional right of appeal to this Court.

In view of the whole scheme of the Act of March 3, 1891, and the decisions of this Court under it, the Act of March 3, 1911, and the Act of January 28, 1915, it is plain that no writ of error lies from this Court. When the various acts of Congress are taken into consideration, together with the clear intent of the Act of January 28, 1915, as contained in the debates and reports in the Congressional Record, it becomes manifest that this writ of error was prosecuted solely for the purpose of delay, and clearly within the provisions of Section 2, Rule 23, of this Court, the penalties of which we respectfully ask the Court to impose. Appeals for the purpose of delay are too prevalent in our judicial system, and we respectfully submit the only way of curbing the activity of litigants in this particular, and thus in a measure relieving an already overburdened court, is to enforce the rule provided in such cases.

We respectfully submit that the motion to dismiss for want of jurisdiction should be granted, together with damages for the delay herein.

E. A. DOUTHITT,
Attorney for Defendant in Error.





No. 638.

OCT 4 1916
JAMES D. MAHER
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Supreme Court of the United States

OCTOBER TERM, 1916.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

REPLY BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS FOR WANT OF JURISDICTION

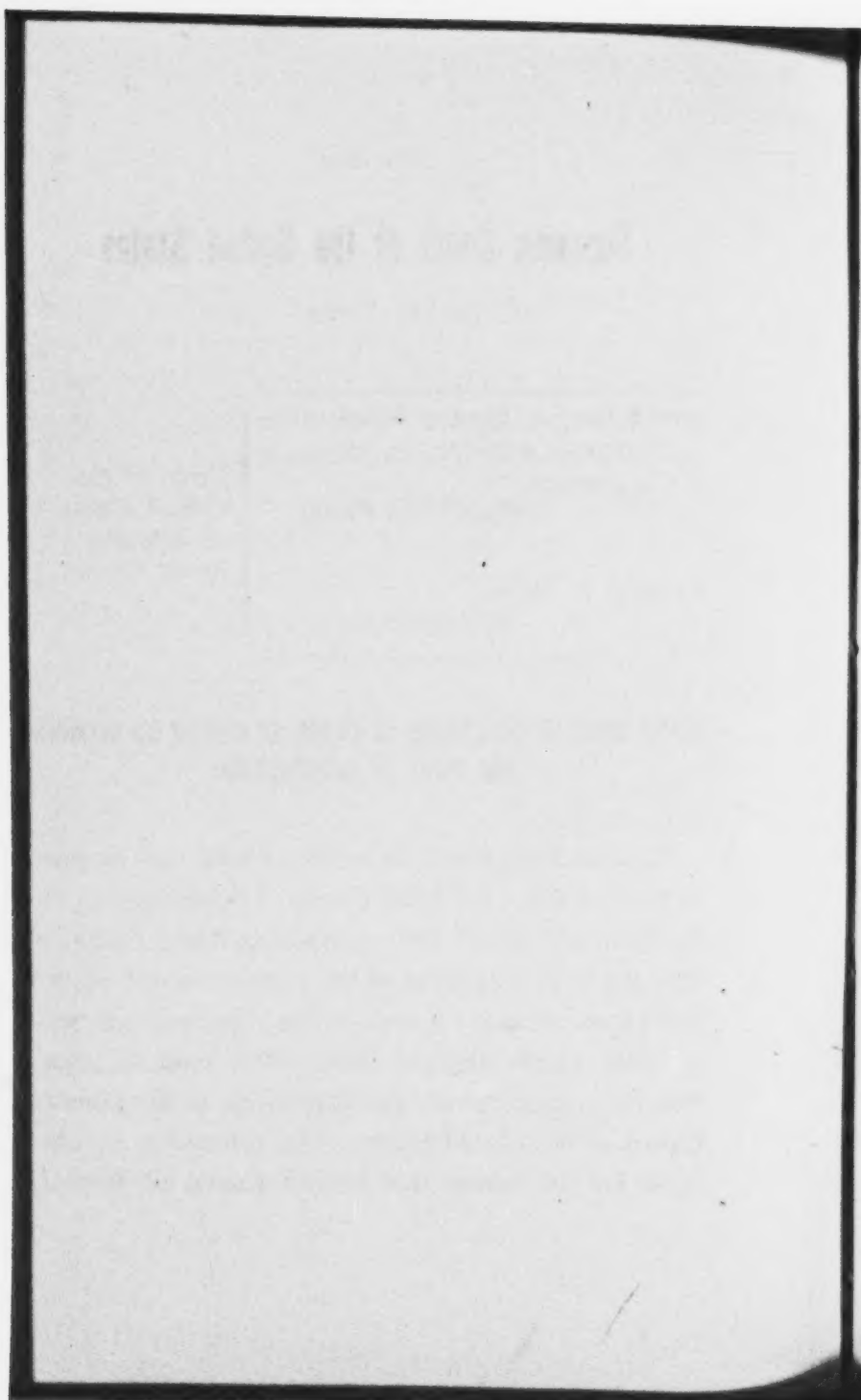
E. A. DOUTHITT,
Attorney for Defendant in Error.

Filed this day of, 1916.

J. D. MAHER, *Clerk.*

By

Deputy Clerk.



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REPLY BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS FOR WANT OF JURISDICTION

Counsel for plaintiff in error contend that in view of the fact that the Circuit Courts of Appeals were, by the Judiciary Act of 1891, given appellate jurisdiction over the final judgments of the supreme courts of the Territories, there is no force in the argument that Section 241 of the Judicial Code, refers only to cases, Federal in their nature, and originating in the District Courts of the United States. This contention is fallacious for the reason that Circuit Courts of Appeal,

pursuant to Section 15 of the Act of 1891, exercised appellate jurisdiction over the final judgments of the supreme courts of the Territories in certain specified cases, set forth in Section 6 of said Act, which were mainly and essentially of a *federal character*. The whole scheme of the appellate jurisdiction of the Circuit Courts of Appeal, according to the Judiciary Acts of 1891 and 1911, is based upon cases involving a federal question.

Plaintiff in error also argues that because Section 128 of the Code makes the judgments of the Circuit Courts of Appeal final in certain enumerated cases, the case at bar not being one of those, that Section 241 applies. This reasoning is unsound, because Sections 128 and 241 are to be read together; and as Section 128 refers only to the appellate jurisdiction of the Circuit Courts of Appeal over the final decisions of the District Courts of the United States, including the United States District Court for Hawaii, it is manifest that this court can exercise appellate jurisdiction over the final judgments of the Circuit Courts of Appeal only in such other cases of a federal character, not made final by the provisions of Section 128, and originating in the District Courts of the United States, including the District Court for Hawaii.

Counsel admit in their brief (p. 11) that the actual intent of Congress in passing the Act of January 28, 1915, was to relieve this court. It is the policy of courts to carry out, if possible, the object of the law-makers; and a construction of Section 241 of the Judicial Code allowing a writ of error in this case, would not only fail to carry out the intention of Congress, but would defeat the plain object of a law passed to relieve this court of a part of its burden.

Respectfully submitted,

E. A. DOUTHITT,
Attorney for Defendant in Error.



SUPREME COURT OF THE UNITED STATES.

No. 638.—OCTOBER TERM, 1916.

Inter-Island Steam Navigation Company, Limited, Plaintiff in Error, vs. George E. Ward.	}	In Error to the United States Circuit Court of Appeals for the Ninth Circuit.
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[October 30, 1916.]

Mr. Chief Justice WHITE delivered the opinion of the Court.

On writ of error prosecuted from the court below to a judgment of the Supreme Court of Hawaii rendered in a case where there was no Federal question and no diversity of citizenship, the judgment was affirmed and the case was brought here. By a motion to dismiss, our jurisdiction is disputed and to dispose of it requires a consideration of Section 246 of the Judicial Code as amended by the Act of January 28, 1915 (38 Stat. 803, c. 22).

That amendment provides, first, that "Writs of error and appeals from the final judgments and decrees of the Supreme Court of the Territory of Hawaii and of the Supreme Court of Porto Rico may be taken and prosecuted to the Supreme Court of the United States . . . in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of a State in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States" And this is immediately followed by a provision giving power to this court to review by certiorari "in all other cases, civil or criminal, in the Supreme Court of the Territory of Hawaii or the Supreme Court of Porto Rico." The next and separate sentence which follows these provisions and which concludes the amendment is this: "Writs of error and appeals from the final judgments and decrees of the supreme courts of the Territory of Hawaii and of Porto Rico, wherein the amount involved, exclusive of costs, . . . exceeds the value of \$5,000, may be taken and prosecuted in the circuit courts of appeals."

The argument supporting jurisdiction is that as by the general provisions of the Judiciary Act of 1891, now embraced in Section 241 of the Judicial Code, power exists in this court to review by error or appeal the final decisions of the circuit courts of appeals in all cases where the jurisdiction of the trial court did not depend upon diversity of citizenship or where the case was not otherwise by provisions of law expressly made final in the circuit courts of appeals, therefore power to review exists since this case is not in one of the excepted classes. But the contention overlooks the fact that from the beginning and continuously up to the adoption of the Amendment of 1915 appeals and writs of error to the supreme courts of Hawaii and of Porto Rico were not left to be controlled by the law generally applicable to courts of the United States as expressed in the Judiciary Act of 1891 or as found in the provisions of the Judicial Code re-adopting that act, but were governed by special provisions controlling the subject—a purpose which is exemplified by the terms of the Amendatory Act of 1915. This is plain when it is considered that the two classes of cases enumerated in the Amendment of 1915 were practically in the same terms expressed in the prior acts which conferred reviewing jurisdiction in both classes exclusively upon this court and that the only substantial change made by the amendatory act was to take from this court the jurisdiction to review in the second enumerated class and confer it upon the Circuit Court of Appeals to which Hawaii belonged. And indeed there is nothing in the context of the statute which countenances the view that the statute intended to merely take away the jurisdiction of this court in one class of cases and at the same time to restore jurisdiction as to the same class by means of a power conferred or contemplated to exist to review on error or appeal the judgments and decrees of the Circuit Court of Appeals. Besides, as the remedy intended to be afforded by the Amendment of 1915 was evidently the restricting of the jurisdiction of this court to the end that the burden on its docket might be lightened, we cannot construe that amendment as frustrating the purpose which it was adopted to accomplish. *American Security Co. v. District of Columbia*, 224 U. S. 491, 495.

Dismissed for want of jurisdiction.

